SUPREME COURT OF THE UNITED STATES.

No. 118.

DECEMBER TERM, 1867.

O. B. & O. S. LATHAM vs. THE UNITED STATES.

AGREEMENT OF COUNSEL TO AMEND RECORD.

1 In the Court of Claims.

O. B. & O. S. LATHAM
vs.
THE UNITED STATES.

Petition for appeal filed June 14th, A. D. 1866.

At a Court of Claims held at the Capitol, in the city of Washington, on Thursday, the 21st day of June, A. D. 1866.

O. B. & O. S. LATHAM
vs.
THE UNITED STATES.

The appeal in the above-named case is allowed and ordered to be certified, as prayed for by the claimants in their petition.

A true copy of record.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, at Washington, this 17th day of October, A. D. 1866.

[SEAL.]

SAM'L H. HUNTINGTON,
Chief Clerk Court of Claims.

Attest:

JOS. CASEY, *Chief Justice.*

2 In the Supreme Court of the United States.—December term, 1867.

O. B. & O. S. LATHAM
vs
THE UNITED STATES. } No. 118.

It is stipulated that it appears by the record in this case that on the 21st day of June, A. D. 1866, the Court of Claims allowed the appeal prayed for by the claimants in their petition set forth in the transcript, and ordered the statement and specification of the alleged errors contained in the said petition to be certified to the Supreme Court of the United States.

It is further stipulated, that the transcript be taken as amended in this behalf as if upon certiorari.

E. P. NORTON,
Solicitor for the United States.
CARLISLE & McPHERSON,
For App'ts.

O

SUPREME COURT OF THE UNITED STATES.

No 20

O. B. AND O. S. LATHAM

vs.

THE UNITED STATES.

IT IS STIPULATED and agreed that the following papers marked Exhibits 1 and 2, are to be filed as the exhibits so marked in the certificate of the Court of Claims and are to be taken as if returned on certiorari.

THOS H. TALBOT,
for the United States.

J. M. CARLISLE,
for Appellants.

EXHIBIT I.

Referred to in the Certificate of the Court of Claims.

IN THE COURT OF CLAIMS.

OBADIAH B. LATHAM AND OLIVER S. LATHAM *vs.* THE UNITED STATES.

PETITION.

To the honorable the judges of the Court of Claims:

The petition of Obadiah B. Latham and Oliver S. Latham, both of Seneca Falls, county of Seneca, and State of New York, respectfully shows:

That at the several times of entering into the contracts, and furnishing the materials, and doing the work hereinafter mentioned, they were copartners, doing business under the name and style of O. B. & O. S. Latham, and are now such co-partners.

That on the 25th day of July, 1855, they entered into a written contract with the United States, acting by James Guthrie, Secretary of the Treasury, to furnish and deliver all the materials, and do and perform all the work required to construct and complete a building to be erected at Buffalo, in the State of New York, for a custom-house, including accommodations for a post office and United States court-room; a copy of which contract, and of the printed specifications therein mentioned, are hereunto appended, and marked Exhibits A and B respectively, and are presented as a part of this petition. That the said Secretary of the Treasury entered into said contract under the authority of the second and third sections of chapter 242 of the acts of the Thirty-third Congress, entitled an act making appropriations for the civil and diplomatic expenses of government for the year ending the 30th of June, one thousand eight hundred and fifty-five, and for other purposes," approved August 4, 1854.—(See 10 Statutes at Large, p. 571.)

That the said building was, by the terms of said contract and the directions of said Secretary of the Treasury, to be eighty-five feet in length and sixty feet in width; and the exterior walls were to be of a certain sandstone from the State of Ohio, known as Peninsula sandstone, a specimen cube of said stone being lodged with said Secretary of the Treasury at the time of making said contract, and marked "C A J; sample of white Cleveland stone for Buffalo custom-house."

That, immediately after the making of said contract, your petitioners proceeded to furnish the materials and perform the work therein mentioned, and had partly erected the walls of said building, and were prosecuting the work according to the terms of said contract, when, some time in or about the month of January, 1856, they were informed by the Treasury Department of the United States, or its authorized agent, that the Department intended to increase the length of said building about twenty-five feet, and to increase its height about two feet, and to alter in some other respects the plans and arrangement thereof specified in said contract. And thereupon, and in consequence of said information, your petitioners were compelled to partially suspend work on and about said building; which partial sus-

pension continued, as will be hereinafter stated, until about the middle of June, 1856. That in pursuance of the recommendation of the Secretary of the Treasury, made some time during the winter of 1856, Congress passed a joint resolution appropriating money for the enlargement and alteration of said building, the same to be done under the direction of the Secretary of the Treasury, by the terms of said resolution: said resolution being entitled "Joint resolution for enlarging the custom-house, post office, and court-house at Buffalo, New York," approved April 4, 1856.—(See 11 Statutes at Large, p. 142.) And thereupon, and by virtue of the authority vested in him, the Secretary of the Treasury resolved to increase the length and the height, and otherwise alter said building; and to do so, it became the duty of said Secretary to prepare and furnish plans, drawings, and specifications of said increase and alterations, and give the necessary orders to your petitioners to go on again with the work on said building. That before and about the time of the passage of said joint resolution, the agents of the Treasury Department having the direction of the work on said building, informed your petitioners, at Buffalo, that the necessary plans, drawings, and specifications for said increase and alterations would be immediately sent on from Washington, and that your petitioners must stand ready to prosecute the work on said building without delay and with vigor. That your petitioners, immediately thereupon, prepared themselves with the necessary men, teams, tools, implements, vessels for transporting the stone from Ohio, docks and yards for landing and cutting the same in Buffalo, for a prompt and vigorous prosecution of the work; and immediately on the passage of said joint resolution your petitioners were prepared and were desirous of going on with the work; but the Treasury Department unnecessarily neglected to furnish the said plans, drawings, and specifications, as it was bound to do, and did not furnish the same until the latter part of the month of June, 1856. That during all this period, from the time of the passage of the joint resolution—to wit, April 4—until the latter part of the month of June following, your petitioners were directed by the authorized agent of the Treasury Department, having the direction of the work on said building, not to go on with the same until orders to that effect should arrive at Buffalo from the Treasury Department at Washington, which direction your petitioners were bound to and did obey. That, during all the period last mentioned, your petitioners (being informed by said agent, from time to time, that said orders were daily expected) were prepared in manner aforesaid, and were anxious to go on with said work. That the men, teams, tools, implements, vessels, docks, and yards, employed as aforesaid, were, during the period last mentioned, either lying idle, or were working and being used to great disadvantage on account of said unnecessary delay of the Treasury Department. That orders finally came from the department for your petitioners to go on with the work, on or about the 16th day of June, 1856, whereupon your petitioners immediately commenced the vigorous prosecution of the work. That in consequence of said

delay your petitioners were unable to get said building roofed and enclosed during the balance of the season of 1856, and the work thereon was protracted thereby through one additional season. That the damage accruing to your petitioners from the delay above specified, and caused as aforesaid, was $6,000; which sum the United States are justly bound to pay to them, with interest thereon.

Your petitioners further show that, according to the terms and spirit of said written contract, they agreed to furnish, cut, prepare, and lay the stone in the walls of said building (according to its original dimensions) in the usual and customary mode, as understood and practiced by builders generally throughout the country, and that the price mentioned in said contract, so far as it related to that part of the work, (the same being readily ascertained by a reference to the proposals for said contract made by your petitioners, and now on file in the office of the Secretary of the Treasury,) was intended to be and was fixed as compensation for furnishing, cutting, preparing and laying the stone in said usual and customary mode. That the usual and customary mode of furnishing, quarrying, cutting, preparing, and laying stone of the kind used in this building, in the exterior walls, is on the "edge" or "cant" or "tilt," (these three terms being used indiscriminately to designate the same thing,) and not on the "quarry bed" or "natural bed" or "strata," (these three terms also being used indiscriminately to designate the same thing.) That after the said contract had been entered into, and signed and delivered, your petitioners commenced work on said building, under said contract, and quarried, brought to Buffalo from Ohio, and cut and prepared ready for laying in the exterior walls of said building, a large quantity of said Peninsula sand stone, all of which was quarried, cut, and prepared for being laid in the usual and customary mode as above defined. That said stone was thus cut and prepared under the supervision of the superintendent appointed by the Secretary of the Treasury, (as provided in said contract,) and was inspected and approved by him. But before any of said stone thus quarried, cut, and prepared, was laid in the walls of said building, said Treasury Department directed and required that all the stone to be laid in the exterior walls of said building should be quarried, cut, prepared, and laid therein on the quarry bed or natural bed or strata, as above defined. And your petitioners allege that such direction and requirement was contrary to the intent and meaning of said contract, and a wide departure therefrom. Nevertheless, your petitioners, in obedience to said direction and requirement, but protesting and objecting that this was a departure from said contract, did throw aside the stone thus quarried, cut, and prepared to lay in the usual and customary mode, to wit, on the edge, and did cut and prepare other stone in the place of those, so that they could be laid in an unusual and extraordinary mode, to wit, on the quarry bed; and thereupon and thereafter, they quarried, cut, prepared, and laid all the stone in the exterior walls of said building on the quarry bed—your petitioners insisting that this was a departure from the terms and spirit of said contract, and that they were not bound to receive the con-

tract price as a full compensation for this part of the work on said original building, but were entitled to be paid therefor what the same was worth; and they now thus insist.

Your petitioners further show that, to quarry, transport from Ohio to Buffalo, and there cut, prepare, and lay the stone in the *manner* above required, to wit, on the quarry bed, was more than twice as expensive as it would have been to have done the same in the usual and customary mode, to wit, on the edge; and that, in this particular and for this reason, it cost your petitioners more than twice as much to erect the exterior walls of said building as it would had they been permitted to erect them in the usual and customary mode, as provided in said contract, to wit, by laying the stone on the edge. That your petitioners have been paid from time to time by the United States, as the work on said building progressed, certain sums of money for and on account of the stone work in said exterior walls, but they have not accepted the same in full payment, but have demanded greater compensation therefor. That there is now due to your petitioners, for and on account of said stone work in the exterior walls of said original building, the aggregate sum of forty thousand dollars, with interest from the several times when the several items of this aggregate sum were due, which amount the United States are justly bound to pay to them.

Your petitioners further show that, in and by the written proposals which they presented to the Secretary of the Treasury, and which contained their bid for said contract, they specified five different kinds of finish which they would, at certain specified prices, put upon the surface of the exterior walls of said building; which five kinds were shown on the specimen stone furnished with their proposals to the Secretary of the Treasury, and which said proposals and specimen stone were presented and furnished in pursuance of the requisition of the Treasury Department, and are now in the possession of said department—your petitioners hereby requesting that they may be produced to your honors as a part of the testimony in this case. That one of these kinds of finish was the "fine-cut or double drove" finish, so called. That the amount included in the aggregate sum of said written contract for stone work in the exterior walls of said building, was that at which your petitioners agreed in said proposals to put the said fine-cut or double drove finish on said exterior walls; and that, therefore, that style of finish, or a style not more expensive than that, was the style impliedly fixed in said written contract. That this style of finish is shown upon the specimen stone hereinbefore mentioned, marked "C A J, sample of white Cleveland stone for Buffalo custom-house," and which is mentioned at the foot of said written contract, and is the kind of stone of which the said exterior walls are constructed, which said specimen stone is now in the possession of the Treasury Department, your petitioners hereby requesting that it may be produced to your honors as a part of the testimony in this case. Nevertheless, the Secretary of the Treasury, against the protest and objections of your petitioners, required them to put a style of finish upon the exterior walls of said original build-

ing, called the "patent-axe" finish, and they put the same thereon, excepting on one end of said building. That this style of finish is not usual or customary or suitable to be put upon the kind of stone laid in the exterior walls of said building, nor is it shown in either of the specimen stones above mentioned, nor is it required by the terms or spirit of said contract, but is an unusual, unsuitable, and extraordinary style, and the requirement aforesaid was a departure from said contract. That to put the patent-axe finish upon said exterior walls was worth, and actually cost your petitioners, full twenty-five per cent. more than it would to have put the fine cut or double-drove finish thereon. That your petitioners were not bound to receive the contract price for putting on said finish as a full compensation for this item of work, but were entitled to be paid therefor what the same was actually worth. That there has been paid to your petitioners by the United States, from time to time, as the work progressed, certain sums of money for and on account of the putting on of said finish, but they have not accepted the same in full payment therefor, but have demanded greater compensation therefor. That there is now due to your petitioners, for and on account of said finish put upon said original building, the aggregate sum of thirty-five hundred dollars, with interest from the several times when the several items of this aggregate sum were due; which amount the United States is justly bound to pay to them.

Your petitioners further show, that on putting in proposals in writing for said contract as before stated, they, in pursuance of the newspaper advertisements of the Secretary of the Treasury, (a copy of which is appended to said proposals now on file in the Treasury Department,) inviting such proposals, and in pursuance of the printed specifications hereto annexed, furnished to the Treasury Department, in the month of July, 1855, and just before said contract was awarded, samples or specimens of two different kinds of stone, either one of which kinds they proposed to put into the exterior walls of said building. These specimens were prepared in the manner mentioned in said specifications. One of them was "Lockport" stone from the State of New York, and the other "Independence sandstone" from the State of Ohio; the latter being the same kind as that theretofore used by the United States in the erection of their marine hospital at Cleveland, Ohio. With the quality, cost, and feasibility of obtaining both these kinds, your petitioners were well acquainted. At the same time, several other persons besides your petitioners put in proposals for this contract, and furnished the Treasury Department with specimen stones; among whom was one C. A. Jones, of Rochester, in the State of New York. Said Jones furnished a specimen stone called "Peninsula sandstone," from the State of Ohio, with which kind of stone your petitioners were wholly unacquainted, they knowing nothing of its cost or the feasibility of obtaining it for building purposes. These various proposals for this contract were publicly opened, in the presence of one of your petitioners and other persons, by the Secretary of the Treasury, on the 5th day of July, 1855; and

it was thereupon found that the aggregate bid of your petitioners was the lowest. The authorized agent of the Secretary of the Treasury, on the day following the opening of the proposals at the time aforesaid, stated to one of your petitioners that the said Secretary would award said contrrct to them on condition that they would agree to erect the exterior walls of said building of the kind of stone shown in the specimen furnished by said Jones, to wit, Peninsula stone; to which your petitioners replied they would do so, provided said Peninsula stone could be obtained as readily and easily and feasibly, for the purposes of said building, as could the Independence stone; at the same time informing said agent that your petitioners were wholly unacquainted with the facts pertaining to said Peninsula stone; and thereupon said agent informed your petitioners that said Peninsula stone could be as readily and easily and feasibly obtained for the purposes of said building as said Independence. Whereupon your petitioners, fully relying upon the correctness of this representation, and solely in consequence of said representation, agreed to erect the exterior walls of said building of said Peninsula stone; and thereupon the Secretary of the Treasury, through his said agent, awarded, on the 6th of July, 1855, the contract for the construction of said building to your petitioners, who thereafter entered into said written contract with the Secretary of the Treasury. And your petitioners allege the fact to be that the Peninsula stone was then, and always had been, and was throughout the period of the erection of said building, much more difficult to be obtained than the Independence stone, and could not as readily and easily and feasibly obtained as the Independence, but on the contrary, to obtain and use the same for the purposes of the said building cost double the sum that it would to have obtained and used the Independence stone for that purpose, which increased cost was caused by the aforesaid misrepresentation of the facts of the case. Your petitioners do not allege that such misrepresentation was intentional; but, on the contrary, they have no doubt that it was unintentional and the result of mistake. Your petitioners allege that the damage accruing to them in the erection of the building, on account of this misepresentation, is fifteen thousand dollars, which sum the United States are justly bound to pay to them, with interest thereon.

Your petitioners further show that, under and by virtue of the said joint resolution, the Secretary of the Treasury caused the said building to be extended in length 25 feet beyond the length contemplated and agreed upon in said original written contract, and he also caused the same to be increased in height about two feet, and to be otherwise altered from the size, plan, and arrangement contemplated and agreed upon in said written contract; that said Secretary directed and requested your petitioners to erect this addition, both in length and height, to said original building, and to make the said alterations in said building; that, in compliance with said direction and request, they furnished and delivered all the materials, and did and performed all the work necessary to complete said addition and alterations, the whole being done under the supervision and direction,

and to the satisfaction of said Secretary, and the same having been accepted by him, he acting in the premises for the United States; that said additional building, together with said alterations, as also the building agreed upon in said written contract, have been long since completed and finished and accepted by the United States, and are now and have been for nearly one year last past occupied and used by the United States; that the stone of which the exterior walls of said addition is constructed is the same as that of which the exterior walls of said original building is constructed, to wit, Ohio Peninsula sandstone; that all the stone in the exterior walls of said addition are cut, prepared, and laid on the quarry bed and the patent-axe finish is put on the surface thereof, excepting on one end of said addition, as is the case with said original building; that the stone were thus cut, prepared, and laid, and this finish put on by the direction and at the special request of the Secretary of the Treasury, your petitioners at the time, and from time to time as the work progressed, protesting and insisting that this mode of cutting, preparing, and laying, and this style of finish, were not according to the usual and customary mode of erecting the walls of buildings of such stone as the Peninsula, but were unusual and extraordinary, and that your petitioners were not bound nor required by any contract, express or implied, to do the work in that manner, and also insisting and informing the Treasury Department that they should not accept as compensation for this portion of the work any price fixed or agreed upon, either expressly or impliedly, in said written contract, but should insist upon being paid therefor what the same was worth. And your petitioners request that all the allegations above made in respect to said original building concerning the quarrying, cutting, preparing, and laying the stone in the exterior walls thereof on the quarry bed instead of the edge, and in respect to putting the patent-axe finish thereon, may, so far as they can be applicable, be applied to said addition to said building as fully as if said allegations had been particularly set forth in this place.

And your petitioners further show that, in truth and in fact, no contract was ever made and entered into, written or otherwise, between them and the Secretary of the Treasury, in regard to any of the materials furnished and work done by them for and on said addition to said building, excepting in regard to certain excavation for the foundation thereof and the erection of the foundation and area walls, and certain flagging in the area, which said items of work, amounting in the aggregate to $6,513 63, are particularly stated on a paper attached to said contract, hereunto annexed, to which your petitioners refer; that sundry negotiations between them and the said Secretary were had previously to the commencement of the work on said additional building, and soon after its commencement, and from time to time while the work was going on, but, with the exception aforesaid, your petitioners and said Secretary were never able to agree upon the price of said materials and work; that the same is also the case in respect to many of said alterations in said building. Nevertheless said Secretary directed and requested your

petitioners to furnish said materials and do said work, with which direction and request they complied, and said additional building and said alterations have been completed to the satisfaction of said Secretary, and accepted and occupied by the United States as aforesaid. Therefore your petitioners insist that they are entitled to be paid therefor what the same is worth; that they have from time to time been paid by the United States, as the work on said addition and alterations progressed, certain sums of money for and on account thereof, but they have never accepted the same in full payment, but have demanded greater compensation therefor; that there is now due to them therefor the aggregate sum of eighteen thousand dollars, with interest from the several times when the several items of this aggregate were due, which amount the United States are justly bound to pay them.

Your petitioners further show that they have, from time to time, since they commenced work on said building, in the year 1855, by direction and at the request of the Secretary of the Treasury, furnished materials for and done certain "extra work," so called, on and around said building, not embraced in the plan of said original building, nor in that of said additional building, nor in said alterations above mentioned; that the same have been done under the supervisions and to the acceptance of the Secretary of the Treasury, and have been long used and occupied by the United States; that your petitioners have not been paid therefor; that they are entitled to receive therefor what the same is worth; that there is now due to them therefor the aggregate sum of four thousand dollars, with interest from the several times when the several items of this aggregate were due, which amount the United States are justly bound to pay to them.

Your petitioners further show that they have done and performed every matter and thing required of them by said written contract, and by any other contract, expressed or implied, concerning said original and additional building at Buffalo, and that the whole of said building is erected and completed in a workmanlike manner, and has long since been accepted by said Secretary of the Treasury, and occupied and used by the United States.

And your petitioners further show unto your honorable body, that on the 7th day of April, 1856, they entered into another written contract with the United States, acting by James Guthrie, Secretary of the Treasury, to furnish and deliver all the materials, and do and perform all the work required to construct and complete a building to be erected at Oswego, in the State of New York, for a custom-house, including accommodations for a post-office and United States court-room, a copy of which contract, and a copy of the printed specifications therein mentioned, are hereunto appended, and marked Exhibits C and D, respectively, and are presented as a part of this petition. That said Secretary of the Treasury entered into said contract under the authority of the second and third sections of chapter 242 of the acts of the thirty-third Congress aforesaid.—(See 10 Statutes at Large, p. 571.)

That immediately after entering into said contract you petitioners proceeded to perform the same on their part, and that they have done and performed every matter and thing required of them by said written contract, or any other contract, express or implied, concerning said building at Oswego; and that the same is erected and completed in a workmanlike manner, and was long since accepted by said Secretary, and has long been occupied and used by the United States.

Your petitioners further show that, as provided in said contract, the exterior walls of said building are erected of Cleveland white stone; that is to say, of Peninsula sandstone, from the State of Ohio, being the same kind of stone and from the same quarry as that used for the same purpose in the above-described building at Buffalo. That, according to the terms and spirit of said written contract, they agreed to furnish, cut, prepare, and lay the stone in the walls of said building at Oswego, in the usual and customary mode, as understood and practised by builders generally throughout the country; and that the price mentioned in said contract, so far as it related to that part of the work, (the same being readily ascertained by a reference to the proposals for the contract to erect said building, made by E. B. Soule, mentioned in the contract of your petitioners, said proposals being on file in the office of the Secretary of the Treasury,) was intended to be, and was fixed, as compensation for furnishing, cutting, preparing, and laying the stone in said usual and customary mode. That the usual and customary mode of furnishing, quarrying, cutting, preparing, and laying stone of the kind used in this building, in the exterior walls, is on the "edge," or "cant," or "tilt," (these three terms being used indiscriminately to designate the same thing,) and not on the "quarry bed," or "natural bed," or "strata," (these three terms also being used indiscriminately to designate the same thing.) Nevertheless, the said Secretary directed and required your petitioners to quarry, cut, prepare, and lay all the stone in the exterior walls of said building on the quarry bed. Your petitioners allege that such direction and requirement were contrary to the intent and meaning of said contract, and a wide departure therefrom. But your petitioners, in obedience to said direction and requirement, but protesting and objecting that this was a departure from said contract, quarried, cut, prepared, and laid all the stone in the exterior walls of said building on the quarry bed. Your petitioners, insisting that this was a departure from the terms and spirit of said contract, and that they were not bound to receive the contract price as a full compensation for this part of the work on said building, but were entitled to be paid therefor what the same was worth; and they now thus insist.

Your petitioners further show that to quarry, transport from Ohio to Oswego, and there cut, prepare, and lay the stone in the manner above required, to wit, on the quarry bed, was more than twice as expensive as it would have been to have done the same in the usual and customary mode, to wit, on the edge; and that, in this particular and for this reason, it cost your petitioners more than twice as

much to erect the exterior walls of said building as it would had they been permitted to erect them in the mode provided in said contract, to wit, by laying the stone on the edge. That your petitioners have been paid from time to time by the United States, as the work on said building progressed, certain sums of money, for and on account of the stone work in said exterior walls, but they have not accepted the same in full payment, but have demanded greater compensation therefor. That there is now due them, for and on account of said stonework in the exterior walls, the aggregate sum of $43,000, with interest from the several times when the several items of this aggregate sum were due; which amount the United States are justly bound to pay them.

Your petitioners further show that the stone laid in the foundation and basement walls of said building are what is called "Oswego stone," which kind of stone was used for that purpose under the direction of the Treasury Department; that by the terms and spirit of said contract, they agreed to prepare and lay said stone in the usual and customary mode, as above described; that that mode was to lay such stone in such walls on the edge, and not on the quarry bed, as those terms are hereinbefore defined. Nevertheless, said Secretary of the Treasury required your petitioners to prepare and lay on the quarry bed; and, protesting that they were not bound so to do, they yielded to said requirement, and laid them all upon the quarry bed; that the price for this item of the stone work, fixed by said contract, was intended to be a compensation for laying them in the usual and customary mode, as above defined; that requiring them to be laid as aforesaid was a departure from said contract; that your petitioners are therefore entitled to be paid therefor by the United States what the same is worth; that to prepare and lay them in this unusual and extraordinary mode was far more expensive, and cost your petitioners far more than it would to have prepared and laid them in the usual and customary mode: that from time to time, while this part of the work was being performed, the United States paid your potitioners certain sums for and on account of said foundation and basement walls, but they have not accepted the same in full payment, but have demanded greater compensation therefor; that there is now due to them therefor the aggregate sum of one thousand dollars, with interest from the several times when the several items of this aggregate were due, which amount the United States are justly bound to pay to them.

Your petitioners further show that, by the terms and spirit of said contract for the said building at Oswego, they were bound to put upon the surface of its exterior walls some one of the usual and customary styles of finish suitable to be put upon said Peninsula stone, and were not bound thereby to put thereon any style of finish other than one of the styles shown in the specimen stone, (marked "C A J," heretofore mentioned,) or a style not more expensive than the most expensive style shown in said specimen: that the most expensive style shown on said specimen is the "fine-cut or double drove" finish, the same being one of the usual and customary styles to put on said Peninsula

stone. Nevertheless, the said Secretary of the Treasury directed and required your petitioners to, on the whole surface of said exterior walls (except one side of said building) the "patent-axe finish," so called, with which direction and requirement your petitioners fully complied, at the same time insisting that this was a departure from the terms and spirit of said contract: that that style of finish was not usual nor customary for that kind of stone, but was an unusual, extraordinary, and unsuitable style: that the sum fixed in said contract for this part of the work was for putting on some one of the usual and customary styles shown in said specimen; that the patent-axe finish was not shown in said specimen, and that they were not bound to receive the contract price for this part of the work, but were entitled to receive therefor what the same is worth; all of which your petitioners do now insist and allege.

Your petitioners further show that to put on said patent-axe finish was worth, and actually cost them full twenty-five per cent. more that it would to have put on the fine-cut or double drove finish, that being the most expensive style shown in said specimen stone, and the most expensive of said usual and customary styles; that they are entitled to be paid therefor what the same is worth; that there has been paid to them from time to time, by the United States, as the work progressod, certain sums for and on account of the puttings on of said finish, but they have not accepted the same in full payment, but have demanded greater compensation therefor; that there is now due to them therefor the sum of thirty-five hundred dollars, with interest from the several times when the several items of this aggregate sum were due, which amount the United States is justly bound to pay to them.

Your petitioners further show that they have, from time to time, during the period of the erection of said building at Oswego, by the direction and at the request of the Secretary of the Treasury, furnished materials for and done certain "extra work," so called, on and around said building, not embraced in the original plan of said building, nor in said contract; that the same have been done under the supervision and to the acceptance of said Secretary, and have long been used and occupied by the United States; that your petitioners have not been paid therefor; that they are entitled to receive therefor what the same is worth; that there is now due to them therefor the aggregate sum of two thousand dollars, with interest from the several times when the several items of this aggregate were due, which amount the United States are justly bound to pay to them.

Your petitioners further show that there are sundry sums of money due to them by the United States, for materials furnished and work done on and about each of said buildings at Buffalo and Oswego, at the request of the Secretary of the Treasury, not included in the foregoing statement, and also for a reasonable profit on other materials furnished and work done on and about each of said buildings by the United States themselves, which by right ought to have been furnished and done by your petitioners, and which they were ready and able to furnish and do, and on which they would have made a profit, but of which they were wrongfully deprived by the United States as

aforesaid, which sums amount, in the aggregate, to four thousand dollars, which the United States are justly bound to pay to them, with interest thereon from the several times when the various items of said aggregate fell due.

Your petitioners further show that they are informed that it is stated by the office of construction of the Treasury Department that the principal items of the foregoing claims were once submitted to Hon. James Guthrie, Secretary of the Treasury, and that he decided that he had no authority to consider or allow anything thereon. Your petitioners deny that there was ever a formal or full submission of said claims to said Guthrie by them, or any decision thereon by him, in view of all the facts of the case, or any such submission to or decision thereon by him as was in any way, or to any extent, binding upon them; that said Guthrie retired from the office of Secretary of the Treasury nearly eighteen months before either of said buildings was completed, and therefore before a large part of said claims accrued to them; but during the winter last past, a statement of all the principal items of the claims above set forth, with affidavits in support thereof, were submitted to Hon. Howell Cobb, Secretary of the Treasury; and your petitioners are informed and believe that he examined so much of said claims as related to requiring your petitioners to lay the stone in said buildings on the quarry bed, and expressed the opinion that said requirement was a departure from the aforesaid contracts, and not according to the usual and customary mode of building such stone, and that your petitioners were not bound to receive therefor the contract prices, but were entitled to be paid by the United States what the work was worth; that he also examined the alleged facts in respect to the delay on the work in the winter and spring of 1856, and expressed the opinion that, if the facts were as alleged, the United States ought to pay your petitioners the amount of any damage they had sustained thereby; but that, inasmuch as it was a rule of the Treasury Department that one Secretary shall not review the decisions of his predecessors, and as it was insisted as aforesaid that said Guthrie had passed upon these question of the quarry bed and delay, and the other main questions in controversy, therefore said Cobb declined to act in respect to the questions of the quarry bed and delay, and that he made little or no examination of, and expressed no opinion upon, the other questions submitted to him.

Your petitioners further state that no person is owner of, or interested in, the aforesaid claims excepting themselves; they therefore pray that your honors will authorize the taking of testimony in this case; and they also pray the judgment of your honors for the several amounts above stated, with interest as aforesaid, and that a bill for their relief may be reported to Congress according to law.

And your petitioners, &c.

OBADIAH B. LATHAM.
OLIVER S. LATHAM.

SENECA FALLS, *May* 31, 1859.

HENRY B. STANTON,
Solicitor of complainants.

STATE OF NEW YORK, *County of Seneca, ss:*

Before me, on this 31st day of May, 1859, personally appeared Obadiah B. Latham and Oliver S. Latham, and each for himself made oath that the facts stated in the foregoing petition are true, to the best of his knowledge and belief.

HIRAM A. PALMER,
Justice of the Peace in and for said county.

EVIDENCE FOR PETITIONERS.

OBADIAH B. LATHAM AND OLIVER S. LATHAM *vs.* THE UNITED STATES.

Exhibit A.

This contract, made and entered into between James Guthrie, Secretary of the Treasury, for and on account of the United States of America, of the first part, and Obadiah B. Latham and Oliver S. Latham, doing business under the name and style of O. B. & O. S. Latham, of Seneca Falls, New York, to whom was awarded the erection of the building authorized to be constructed at Buffalo, New York, for a custom-house, on their bid for the same, received under the advertisement of the Treasury Department of May 3, 1855, of the second part, witnesseth:

The parties of the second part covenant and agree to and with the party of the first part, for themselves, their heirs, or administrators, to furnish and deliver all the materials, and do and perform all the work required to construct and complete the building to be erected at Buffalo, New York, for a custom-house, agreeably to the original drawings and specifications, under the direction of the superintendent appointed by the Secretary of the Treasury for that purpose, and in conformity to the lithographed copies of the drawings of the several parts thereof, numbered one, two, three, four, five, six, seven, eight, and nine, and the printed specifications according to the general conditions appended thereto, prepared at the office of the construction of buildings, under the Treasury Department, and dated May 14, 1855, a copy of which is hereunto attached, which, together with the drawings aforesaid, are made a part of this contract, equally binding as if more particularly incorporated herewith, the whole subject to such omissions, additions, and alterations as may be determined upon by the said party of the first part, as provided for by the "general conditions" of the specifications appended thereto, hereto annexed.

And the said parties of the second part further agree and bind themselves, their executors, administrators, and assigns, to do and complete the entire work, according to the plans and specifications as aforesaid, and to the approval and acceptance of said superintendent, to be appointed as aforesaid, and deliver the same over to the said superintendent in complete and perfect condition, conformably to the plans and specifications as aforesaid, on or before the 1st day of March, eighteen hundred and fifty-seven.

And the said party of the first part, Secretary of the Treasury as aforesaid, doth covenant, promise, and agree, well and truly to pay, or cause to be paid, unto the said parties of the second part, their heirs, executors, administrators, or assigns, the sum of eighty-one thousand three hundred and forty-five dollars, good and lawful money of the coin of the United States, the payments to be made in the following manner, viz: ninety per cent. (8.90) of the value of work done and materials furnished (said amount to be ascertained and duly certified to the department by the superintendent) will, in consideration of the above premises, be paid from time to time, as the work progresses, and ten per cent. (8.90) be retained, until the completion of the work and its approval and acceptance, as aforesaid, by the said superintendent.

And it is further agreed, by and between the parties to these presents, that if, from any cause whatsoever, the said parties of the second part should fail to carry on the work with the required promptness, in the opinion of the said superintendent, to insure its completion by the time specified above, it shall become the duty of said superintendent, and he shall be and is hereby authorized and empowered, after eight day's due notice thereof, in writing, left at the shop, office, or usual place of abode of the said parties of the second part, or with their agent, without effect, to purchase and procure the necessary materials, and have the necessary work performed, to supply any deficiency caused by the delinquency of the said parties of the second part, and the actual cost thereof, together with fifteen per cent. thereon, shall be deducted from any moneys due or owing to the said parties of the second part, on account of this contract; and if there is not that amount due them thereon, their bondsmen are to be held liable for any deficiency, to be recovered of them by suit in the name of the United States.

It is further agreed and understood by the parties hereto, that whatever style of cutting is adopted for the stone of the eastern walls, it is to be executed in the best manner of that style, and to the entire satisfaction of the superintendent.

It is also covenanted and agreed by and between the parties to this contract, that the parties of the second part shall execute, with two or more sufficient sureties, a boud to the United States, in the sum of twenty thousand dollars, conditioned for the faithful performance of this contract, and the agreements and covenants herein made by the parties of the second part.

It is also covenanted, agreed, and understood, that no member of Congress, or other person, whose name is not at this time disclosed, shall be admitted to any interest in this contract.

It is further covenanted and agreed, by the parties hereto, that this contract shall not be assigned, except by consent of the Secretary of the Treasury, and that any assignment thereof, except as aforesaid, will be a forfeiture of the same, and shall subject the said parties of the second part, and their bondsmen, to such damage to be recovered of them by suit in the name of the United States as shall have been suffered by the said party of the first part.

It is also covenanted and agreed, by and between the parties hereto, that in case any additions, omissions, or alterations are determined upon, the same shall be specifically noted hereon, and the amount to be paid or deducted therefor agreed upon and stated.

It is also covenanted and agreed, by and between the parties hereto, that if any materials shall be delivered on the site of the said custom-house, by the parties of the second part, and estimated, and a per-centage paid thereon, by the party of the first part, before they are put in the building, they shall become the property of the United States, and being delivered to the superintendent, shall be worked into the building as it progresses.

In witness whereof, the said James Guthrie, Secretary of the Treasury as aforesaid, for and in behalf of the United States, hath hereunto subscribed his name and caused the seal of the Treasury [SEAL.] Department to be hereunto affixed; and the said O. B. & O. S. Latham have also subscribed their names and affixed their seals, this 25th day of July, 1855.

In the presence of— JAMES GUTHRIE.

R. F. MORGAN. O. B. & O. S. LATHAM. [L. S.]

A. H. BOWMAN,
Engineer in charge T. D.

It is understood that the stone to be used in the construction of the Buffalo custom-house, under this contract, is to be equal in quality of material and workmanship, to a sample now in the office of construction, Treasury Department, marked "C A J, sample of white Cleveland stone for Buffalo custom-house."

O. B. & O. S. LATHAM. [SEAL.]

Witness: A. H. BOWMAN.

MARCH 4, 1858.

The sum of fifty dollars is hereby deducted from this contract for difference between oak and mahogany in finishing custom-house counter, stair-rails, and water-closet seats.

WILLIAM A. PETTES, *Superintendent.*

Copy of a proposition for increasing basement story to Buffalo custom-house.

BUFFALO, *September* 23, 1855.

SIR: We propose to increase the height of the basement story to the Buffalo custom-house two feet (2 ft.) for the sum of eight hundred and ninety-five dollars and forty-two cents, ($895,42,) to wit:

65½	cubic yards of stone masonry, at $4 per cubic yard	$262 00
6,000	brick, at $8 per thousand	48 00
2,514	pounds of cast-iron, in 12 columns, at 3 cents per lb	75 42
3,058	pounds of window shutters, at 9 cents per lb	275 22
1,057	pounds of wiodow frames, at 4 cents per lb	42 28
800	pounds of stairs, at 9 cents per lb	72 00

And the said party of the first part, Secretary of the Treasury as aforesaid, doth covenant, promise, and agree, well and truly to pay, or cause to be paid, unto the said parties of the second part, their heirs, executors, administrators, or assigns, the sum of eighty-one thousand three hundred and forty-five dollars, good and lawful money of the coin of the United States, the payments to be made in the following manner, viz: ninety per cent. (8.90) of the value of work done and materials furnished (said amount to be ascertained and duly certified to the department by the superintendent) will, in consideration of the above premises, be paid from time to time, as the work progresses, and ten per cent. (8.90) be retained, until the completion of the work and its approval and acceptance, as aforesaid, by the said superintendent.

And it is further agreed, by and between the parties to these presents, that if, from any cause whatsoever, the said parties of the second part should fail to carry on the work with the required promptness, in the opinion of the said superintendent, to insure its completion by the time specified above, it shall become the duty of said superintendent, and he shall be and is hereby authorized and empowered, after eight day's due notice thereof, in writing, left at the shop, office, or usual place of abode of the said parties of the second part, or with their agent, without effect, to purchase and procure the necessary materials, and have the necessary work performed, to supply any deficiency caused by the delinquency of the said parties of the second part, and the actual cost thereof, together with fifteen per cent. thereon, shall be deducted from any moneys due or owing to the said parties of the second part, on account of this contract; and if there is not that amount due them thereon, their bondsmen are to be held liable for any deficiency, to be recovered of them by suit in the name of the United States.

It is further agreed and understood by the parties hereto, that whatever style of cutting is adopted for the stone of the eastern walls, it is to be executed in the best manner of that style, and to the entire satisfaction of the superintendent.

It is also covenanted and agreed by and between the parties to this contract, that the parties of the second part shall execute, with two or more sufficient sureties, a bond to the United States, in the sum of twenty thousand dollars, conditioned for the faithful performance of this contract, and the agreements and covenants herein made by the parties of the second part.

It is also covenanted, agreed, and understood, that no member of Congress, or other person, whose name is not at this time disclosed, shall be admitted to any interest in this contract.

It is further covenanted and agreed, by the parties hereto, that this contract shall not be assigned, except by consent of the Secretary of the Treasury, and that any assignment thereof, except as aforesaid, will be a forfeiture of the same, and shall subject the said parties of the second part, and their bondsmen, to such damage as shall have been suffered by the said party of the first part.

It is also covenanted and agreed, by and between the parties hereto, that in case any additions, omissions, or alterations are determined upon, the same shall be specifically noted hereon, and the amount to be paid or deducted therefor agreed upon and stated.

It is also covenanted and agreed, by and between the parties hereto, that if any materials shall be delivered on the site of the said custom-house, by the parties of the second part, and estimated, and a per-centage paid thereon, by the party of the first part, before they are put in the building, they shall become the property of the United States, and being delivered to the superintendent, shall be worked into the building as it progresses.

In witness whereof, the said James Guthrie, Secretary of the Treasury as aforesaid, for and in behalf of the United States, hath hereunto subscribed his name and caused the seal of the Treasury [SEAL.] Department to be hereunto affixed; and the said O. B. & O. S. Latham have also subscribed their names and affixed their seals, this 25th day of July, 1855.

In the presence of— JAMES GUTHRIE.

R. F. MORGAN. O. B. & O. S. LATHAM. [L. S.]

A. H. BOWMAN,
Engineer in charge T. D.

It is understood that the stone to be used in the construction of the Buffalo custom-house, under this contract, is to be equal in quality of material and workmanship, to a sample now in the office of construction, Treasury Department, marked "C A J, sample of white Cleveland stone for Buffalo custom-house."

O. B. & O. S. LATHAM. [SEAL.]

Witness: A. H. BOWMAN.

MARCH 4, 1858.

The sum of fifty dollars is hereby deducted from this contract for difference between oak and mahogany in finishing custom-house counter, stair-rails, and water-closet seats.

WILLIAM A. PETTES, *Superintendent.*

Copy of a proposition for increasing basement story to Buffalo custom-house.

BUFFALO, *September* 23, 1855.

SIR: We propose to increase the height of the basement story to the Buffalo custom-house two feet (2 ft.) for the sum of eight hundred and ninety-five dollars and forty-two cents, ($895,42,) to wit:

65½	cubic yards of stone masonry, at $4 per cubic yard	$262 00
6,000	brick, at $8 per thousand	48 00
2,514	pounds of cast-iron, in 12 columns, at 3 cents per lb	75 42
3,058	pounds of window shutters, at 9 cents per lb	275 22
1,057	pounds of wiodow frames, at 4 cents per lb	42 28
800	pounds of stairs, at 9 cents per lb	72 00

108	lights of sash and glass, at $1 per light	$108 00
125	pounds of waste and soil pipes, &c., at 10 cents per lb	12 50
		895 42

Respectfully, yours,

O. B. & S. LATHAM.

Hon. JAMES GUTHRIE.
(Duplicate.)

BUFFALO, N. Y., *September* 29, 1855.

Approved by the Secretary of the Treasury, per order of 27th September, 1855.

WILLIAM H. PETERS,
Superintendent.

BUFFALO, N. Y., *September* 29, 1855.

We hereby agree to make an increase of two feet in the height of the basement story of the Buffalo custom-house, for the sum of eight hundred and ninety-five dollars and forty-two cents, ($895 42,) furnishing all materials, and doing all the work necessary thereto, according to plans to be furnished from the Treasury Department, and per our proposal, dated 24th September, 1855, hereto attached.

Approved by the Secretary of the Treasury, per order of 27th September, 1855, and endorsed on contract.

WILLIAM H. PETTES,
Superintendent.

BUFFALO, *May* 26, 1856.

SIR: We submit the following bill of quantities, with prices affixed, for furnishing all the materials and doing all the labor in the several kinds of work and items mentioned for the enlargement of the cellar and foundation of the Buffalo custom-house, for the sum of ($6,513 63) six thousand five hundred and thirteen dollars and sixty-three cents, to wit:

		Cost.
	For taking down rubble masonry of end walls—the materials:	
640	cubic yards of earth excavation for cellar and trenches, including carting away, at 75 cents per cubic yard	$480 00
51	cubic yards concrete masonry in trenches and under cellar floor, at $6 per cubic yard	306 00
51	cubic yards of flat stones in extreme foundation, at $10 per cubic yard	510 00
174	cubic yards rubble masonry, end and side walls to main building, including backing of ashlar, at $8 per cubic yard	1,392 00

5 cubic yards of masonry in foundation of partition walls in cellar, at $5 per cubic yard	$25 00
4 piers, and coping the same, in cellar, for columns, at $10 each	40 00
6,750 hard brick in cellar floor, at $10 per thousand	67 50
11,500 brick in partition walls in cellar, at $7 per thousand	103 50
For taking off end ashlar, and rebuilding the same	250 00
220 superficial feet of ashlar in basement, at $2 25 per superficial foot	495 00
621 cubic yards excavation, in area, at 75 cents per cubic yard	465 75
155 cubic yards rubble masonry in area walls, at $7 per cubic yard	1,085 00
21 cubic yards concrete masonry under area floor, at $6 per cubic yard	126 00
456 superficial feet of coping on area walls, at $1 per superficial foot	456 00
1,176 superficial feet stone flagging in area floors, at 38 cents per superficial foot	446 88
For facing rear walls	75 00
For making two door-ways in the place of two windows, in the rear wall, with sills and upright jambs, at $50 each	100 00
2 door-ways in end-walls, with sills and upright jambs, at $45 each	90 00
	6,513 63

Respectfully, yours,

O. B. & O. S. LATHAM.

WM. H. PETTES,
Superintendent of Buffalo Custom-House.

BUFFALO, N. Y., *June* 15, 1856.

Approved, and ordered to be indorsed on contract, per letter of the Secretary of the Treasury, of June 12, 1856.

WM. H PETTES, *Superintendent.*

We hereby agree to furnish all the material, and do all the labor necessary for excavating the earth and building the masonry of the enlarged cellar and foundation and area of the Buffalo custom-house, (removing the end walls and carting away the earth and rubbish,) pursuant to plans furnished from the Treasury Department, and our proposal, a copy of which is hereto attached, for the sum of sixty five hundred and thirteen dollars and sixty-three cents, ($6,513 63.)

Approved, and ordered to be indorsed on contraet, per letter of the Secretary of the Treasury, of June 12, 1856.

WM. H. PETTES,
Superintendent.

BUFFALO, *June* 16, 1856.

BUFFALO, N. Y., *April* 4, 1857.

The sum of sixty dollars is hereby indorsed as an allowance for carting,

building in, painting, &c., of two iron closets in third story of the custom-house.

$60. WM. H. PETTES,
Superintendent.

BUFFALO, *December* 4, 1857.

The sum of one hundred and thirty-five dollars is hereby indorsed on this contract, as an allowance for nine black-walnut sashes, (glazed and varnished,) and painting iron door frames in entrance story.

$135. WM. H. PETTES,
Superintendent.

BUFFALO, N. Y., *February* 18, 1858.

The sum of eight hundred and forty-five dollars and sixty-five cents is hereby indorsed on this contract, as an allowance for constructing mailing room, widening vestibule, inserting iron sashes in antæ, and removing stairs in entrance story.

$845 65. WM. H. PETTES,
Superintendent.

BUFFALO, *March* 4, 1858.

The sum of ninety-nine dollars and seventy-five cents is hereby indorsed on this contract, as an allowance for hard finishing the post office rooms in the entrance and second stories of the building.

$99 75. WM. H. PETTES,
Superintendent.

BUFFALO, N. Y., *March* 16, 1858.

The sum of three hundred and twenty-seven dollars and twenty-five cents is hereby indorsed on this contract, as an allowance for plastering and hard finishing in the basement rooms of the building.

$327 25 WM. H. PETTES,
Superintendent.

BUFFALO, *March* 24, 1858.

The sum of forty-five dollars is hereby indorsed on this contract, as an allowance for providing and inserting a wash basin, and hard finish to walls in inspector's room.

$45. WM. H. PETTES,
Superintendent.

BUFFALO, N. Y., *May* 18, 1858.

The sum of seven hundred and eighty-four dollars and thirty cents is hereby indorsed on this contract, as an allowance for an iron blocking course.

$784 30. WM. H. PETTES,
Superintendent.

BUFFALO, N. Y., *May* 18, 1858.

The sum of eight hundred and eighty-nine dollars and twenty cents is

hereby indorsed on this contract, as an allowance for a brick wall enclosing the lot.

$889 20. WM. H. PETTES,
Superintendent.

Specifications for building the custom-house at Buffalo, New York, including accommodations for a post-office and United States court-room.

[Prepared at the office of the Construction of Buildings, Treasury Department, Washington, D. C.]

Specifications for erecting a new custom-house at Buffalo, New York, including accommodations for a post-office and United States court-room, which is to be done (under the direction of a superintendent appointed by the honorable Secretary of the Treasury for that purpose) according to the following enumerated drawings, consisting of plans, elevations, sections, and working drawings, designed and prepared at the office of the Construction of Buildings, Treasury Department, and agreeably to such further drawings and directions in explanation thereof as may hereafter, from time to time, be furnished therefrom:

DRAWINGS.

No. 1. Plans of foundations, cellar, and entrance story.
2. Plans of second and third stories.
3. Front and end elevations.
4. Longitudinal and transverse sections.
5. Drawing and details of roof.
6. " " exterior.
7. " " interior.
8. " " windows and doors.
9. " " miscellaneous finishings.

GENERAL DESCRIPTION OF THE WORK.

The building will front on Seneca street, its front line being thirty (30) feet from said street, and its west end twenty (20) from Washington street. The entrance story floor will be six feet above the inside line of the sidewalk at the intersection of said streets. The premises must have a proper grade up to the building from the sidewalk; and the steps and the underpinning of the building must be made to conform to said grade—the first in their number, the last in its height—instead of (in that respect) conforming to the drawings. The steps, at the west end, must also have suitable iron hand rails and balusters, if required.

On the sides and ends of the building, there will be sunk *areas*, or *skylights*, to each cellar window, extending from the top of the sidewalk down to the bottom of the sills. They will be covered with a suitable and substantial *wrought-iron* grating, let into a rebate in a

suitable curbstone, which must surround them, and be there properly secured.

The walls of these areas will be rough-coursed ashlar, twelve (12) inches thick, resting on a foundation eighteen (18) inches thick, which must go below the action of the frost. The top of the wall must be finished to receive the curbstones in a proper manner. The bottoms of the areas must be paved with brick, and each be provided with a small drain, to discharge, outside of the walls, into the ground, any water that may fall into them through the grating.

The sidewalks of the two streets, and the approaches to the building from them, must be paved either with the best hard paving brick, or stone flagging, laid to a curbstone of the best material and form to be obtained in the vicinity.

A brick wall will divide the post office packing room from the fuel and furnace room, the post office wash room and the water-closet room in the cellar, and iron stairways must come down from the entrance story into each of the last two rooms.

The cellar walls must be constructed of proper cellar wall stones, laid in courses, upon foundations of large stones laid in the most perfect manner, on a bed of concrete, (if required for its proper stability,) and otherwise fully secured against any settlement. The window and door jambs, and heads in the cellar wall, must be rough-hammered and rebated to receive the window frames and sashes, and the doors, or doors and frames, as may be found to be best. The stones for the foundations should be of the largest size convenient to be obtained, and those for the cellar walls should be of the best, and most proper size for the work. They should be bonded together in the strongest manner, full flushed with cement mortar, and well bedded in the same.

The entire exterior of the building will be faced with the most durable stone to be obtained in the vicinity, including the door and window dressings, the belt courses, cornice, &c. The stone-work of the building must be well and properly dressed, with good surfaces, and arrises, the joints small and well pointed, the beds and builds full to the square, and perfect, and the whole to be left clean and perfect, on the completion of the building.

The outside doors, and the bead of the window frames, and the window shutters and their frames, must be of iron.

The floorings of the whole building are to be composed of small segmental arches, of hard-burned brick work, turned from *wrought*-iron beams resting upon the exterior walls, and upon girders supported by *cast*-iron columns, and by the said walls, the whole covered with *tile* or southern pine flooring plank or boards. The ceiling of the upper story must also be composed of iron beams and brick arches, their haunches brought up with suitable material so that there shall be a descent from the centre of the building to the eaves of not less than three (3) inches over each beam, and the whole covered with "asphalt," to carry off any water that may percolate through the iron covering of the roof. The columns resting upon stone foundations below the cellar paving must extend up through the cellar and the several stories and support their floors and ceilings.

The thickness of the brick-work of the arches must be the width of a brick. Proper scantling furnished and put in by the carpenter, with such aid as may be required from the bricklayer, must be laid and fastened on the brick-work, to receive the floor and nail it to; while, at the proper time, the bricklayer must fill in the haunches of the arches and spaces between the scantling up to a level with their top, with concrete of cement mortar, brickbats, coarse gravel, &c., and make it level and proper to receive the floors of wood. In such floors as are to be covered with stone, or marble tile, the scantling must be left out.

A flue for ventilation is to be made from the upper part of each room throughout the building; they are to go up to the attic, and thence be carried by wooden trunks to the chimney tops without smoke flues, and through them to their tops, and must have an Arnott's ventilating register to each flue.

Wooden blocks must be walled in whenever required, to which to secure the jamb casings and other wood-work.

The floor of the cellar must be paved throughout with the best paving brick, upon a bed of concrete six inches thick, in the very best manner, with granite inside doorsills to all the cellar doors.

The entrance hall and vestibule to the post office in the first story, the vestibules and entrance to the custom-house and rooms in the second story, and the vestibules and passages to the court rooms and its offices in the third and half stories, must be paved with the best quality 2-inch marble, or German tile, laid in diagonal courses with cement mortar, in tesselated manner, with colors, dark and light, alternating.

A sewer, eighteen (18) inches in diameter, must be constructed to the nearest city sewer, (agreeably to the municipal laws and regulations of the city of Buffalo,) through which the soil from the water-closets, &c., and the waste water from the premises can be discharged.

Drains must be constructed leading from the eave conductors and soil pipes of the water-closets and sinks to the above sewer as may be directed to the superintendent. They are to be 10-inch, interior diameter, barrel drains of 4-inch brick-work laid in cement. They must be thoroughly plastered throughout on their inside, and where they go through the foundations be constructed in connextion with them, and fully secured against frost.

All the partitions in the building will be 9 and 11-inch hollow brick walls. On the delivery of the iron-work at the building, the mason must furnish the necessary rigging, staging, labor, and tools not belonging to the iron-worker or blacksmith's trade, to put the same into its place, and do and perform all the work necessary thereto, except what belongs to the said trades, being assisted therein by said tradesmen, who must in all cases do and perform all the work properly pertaining to their respective trades in said iron-work, the mason being responsible for its proper insertion and permanency in the building.

The upper story, at the east end, must be divided into two stories by the insertion of an intermediate flooring shown only on the longi-

tudinal section, and the upper one fully lighted and ventilated by skylights on roof not shown on the drawings. The plan and finish of the upper rooms must be similar to those under them, as shown on drawing No. 4.

The stairways of the building must be of *wrought* and *cast* ironwork, with a mahogany hand-rail, in two flights, extending from the entrance story to the upper and upper half story. From the upper half story to the roof there must be constructed an enclosed flight of stairs, three (3) feet wide, with small iron hand-rail, as directed by the superintendent, (but not shown on the drawings,) by which the roof may be approached for any purpose. The cellar stairs must be of iron, (as above,) and with proper sized iron hand-rail.

There must be six (6) water-closets in the cellar, two (2) in the third story, and two others over them, all of which must be furnished with proper and necessary spring seats, bowls, traps, urine sinks, &c., complete; also with tanks, and cisterns capable of holding, on an average, two hundred (200) gallons of water to each closet, placed immediately over them, and receiving their supplies from the city waterworks. All their main and supply pipes, &c., must be inserted in the brickwork as it goes up, and be fully secured against the action of the frost, and a channel left to receive the soil pipe, which, when put in, must also be fully guarded and secured against the action of the frost.

At the rear side, near the corners of the building, there must be inserted in the outside walls two cast-iron eave conductors, *five* (5) inches in diameter, and *half* ($\frac{1}{2}$) an inch thick, extending from the eaves to the aforementioned drains, to convey the water to them; these pipes must be fully secured againt the action of frost.

There must also be another water conductor, *three* (3) inches in diameter, from the eaves to the cisterns of the water closets in the upper stories, for use in warm weather, with the necessary apparatus to close it during cold weather.

The conductors must be put up in sections, with their proper eave pipes, turns, and elbows, as the work progresses, and have their joints well calked and secured with lead.

A proper main water pipe must be put in, connecting with the main pipe of the city waterworks, and terminating and connecting with proper supply pipes extending to the several water-closet cisterns, and all other parts of the building where they are required; and, should it be necessary, an approved forcing-pump, of a sufficient power and capacity to properly distribute the water, as above, placed and secured at the junction of the main and supply pipes, which should be situated in the most convenient location on the premises.

DIGGING, GRADING, ETC.

The necessary excavation for putting in the foundation, cellar walls, and all other works of a similar nature pertaining to the building, must be done promptly, and as directed by the superintendent.

The spaces on each side of the foundation walls and outside of the

exterior cellar walls must be filled in with proper earth, and thoroughly rammed throughout; the inside must be brought up to within six inches of the paving of the cellar, and properly prepared to receive the concrete bed, which must be laid on it, and the exterior filled with proper earth up to the proper grade line of the premises, as may hereafter be more definitely determined.

All the surplus earth and material that may come out of the cellar and trenches not required for the purpose of grading must be carted away; and all the rubbish that may accumulate during the progress of the work must be carted away, or deposited on the ground and properly graded, as the superintendent may direct. On the completion of the work all the streets and grounds must be cleared up, and such disposition made of all the refuse materials as may be directed.

STONECUTTING, MASON, AND BRICKLAYER'S WORK.

The cement mortar must be composed of materials of the best quality; the hydraulic cement to be fresh burned, perfectly ground, securely put up, and kept dry until used; and the sand of suitable size for the various purposes, clean, and sharp-gritted. The lime for the lime mortar must be fresh and *wood-burned*, and the sand of best quality, proper sized, and sharp-gritted.

When the above materials are wanted for use, they must be well and properly mixed for their several purposes, and thoroughly manipulated, as may be directed by the superintendent, and the mortar used in its most perfect state for the purposes required.

The brick must all be of the best quality, f[illegible]xture, hard-burned, and laid in the most solid manner.

The bidder must furnish to the Treasury Department a sample of the stone which he proposes to put into the exterior of the building. It must be a *cube* of six (6) inches square on each face, and five of its six faces wrought in the several manners of working the stone in the vicinity, and the sixth face left as a split, rough surface, with half of an inch at each edge, tooled or chiseled straight and true.

All the stone-work must be laid with full flushed joints, in cement mortar, the joints raked out, to receive the *pointing*, while the mortar is sufficiently moist for the purpose, and the *pointing* must be done when the work shall have become sufficiently dry to allow of its being properly performed.

Three-quarters of the ashlar of the first story must be fourteen (14) inches thick from its face, and the other quarter, as headers and binders, from eighteen (18) to twenty (20) inches thick. In the second story, the rustic corners must be from thirteen (13) to seventeen (17) inches thick from their face; three-quarters of the remainder of the ashlar must be ten (10) inches thick, and one fourth, as headers and binders, from fourteen (14) to eighteen (18) inches thick. In the third story the rustic corners must be from twelve (12) to sixteen (16) inches thick from their face; three-fourths of the remainder of

the ashlar nine (9) inches, and the residue, as headers and binders, from thirteen (13) to seventeen (17) inches thick.

The piers, of the doorways, provided they can be so obtained, must be in three blocks, the *base* being one, the *shaft* another, and the *capital* the third. The stones, composing the window, and door dressings, the *belt courses*, and cornice, must have proper beds, and be of sufficient width to insure permanency in the construction, and safety in setting and securing them in their places. All the stone must be properly cramped, and anchored to one another, and also to the brick-work, by cramps, furnished by the iron-worker. They must be properly let into, and imbeded in the stone, and secured by brimstone, in the best manner by the mason.

All the stone-work must be backed up with brick-work, in cement mortar, with a space of two (2) inches next to the inner course towards the rooms, which must be tied to the walls by *headers*, every fifth course, at intervals of two bricks. Where heavy weights come on the exterior walls, the open space must be made solid a sufficient distance around it to insure proper stability to receive the weight imposed; and when a girder or beam rests on the wall, a *cast-iron* wall-plate, furnished by the iron-worker, of proper size and thickness, must be inserted under them.

The fireplaces must be made with fire-brick, and have a marble mantel, to be worth $30 each, exclusive of their setting; and, if required, coal grates, (worth $15 each, exclusive of their setting,) with all the requisite fixtures, must be furnished, and properly set in each fireplace. The hearths must be best quality, fire-proof stone, for the purpose, twenty inches wide from the face of the mantel, and five feet six inches long.

There must be constructed in the cellar one or two furnaces, (as may be thought best,) of sufficient power and capacity to warm the entire building, furnished with the necessary cold-air trunks and tin hot-air flues, of proper and sufficient size, leading to all the rooms; and, when necessary or required, they must be carried up through the antæ chimney, &c. The whole to be finished complete, and put up in good working order, with all the hot-air registers, &c. In the entrance story, 5 hot-air registers 15 by 19 inches; in the second story, 2 ditto 15 by 19 inches, and 4 ditto 11 by 15 inches; in the third story, 2 ditto 15 by 9 inches, and 4 ditto 11 by 15 inches; and in the half story, 2 ditto 11 by 15 inches—all which must be inserted in soapstone frames. The walls, throughout the entire work, must be carried up in regular horizontal courses, not exceeding three (3) feet in height, unless otherwise directed by the superintendent.

Suitable coal-slides, to lead to the cellar, must be constructed, with proper covers, &c.

The mason must give the price per thousand for laying any extra brick-work required.

The contractors must furnish all the stone, brick, mortar, labor, staging, and all other materials incident to the stone-work, mason's work, and bricklayer's work on the buildings; do and perform all

the jobbing pertaining to the brick, stone, and mason's work, required in completing this building, or its appurtenances, without any extra charge for the same: and perform all the work in the best manner, to the acceptance of the superintendent.

IRON-WORK.

There will be furnished by the Treasury Department wrought-iron *beams* and *girders* for the floors, ceilings, and roof, together with the cramps necessary for the proper securing of the beams and girders together, and to the walls of the building, as shown in detail drawings. They will be delivered upon a suitable wharf, at Buffalo, by the department, and, by the contractor, taken thence and put into the building.

The iron-worker must furnish all the other iron-work required for the building. All that is mentioned in these specifications, as to be furnished to the other mechanics on the building, and by them to be inserted in the building as it progresses, must be furnished to them promptly, as it is wanted for use; and any delay from want of seasonable delivery shall subject the contractor to a deduction of twice its value for work performed and materials furnished.

There will be in the cellar twelve (12) round columns, sixteen (16) inches at their base, and fourteen (14) at their necks, and three-fourths ($\frac{3}{4}$) of an inch thick. In the entrance story, there will be ten (10) square antæ, in the second story eight, (8,) and four, (4) in the third story, twelve (12) inches square, and three-quarters ($\frac{3}{4}$) of an inch thick. In the entrance story there will be ten (10) round columns, and in the third four, (4,) fourteen (14) inches diameter at their bases, and twelve (12) inches at their necks. All the above will have capitals and bases, as shown on the drawings.—(Vide "detail" drawings.)

The window-shutter castings are to be of cast-iron, but the shutters must be of wrought-iron, properly hung to the frames, having suitable fastenings, &c., complete. The outside doors must also be constructed of wrought-iron, properly hung to the frames, or to the stone jambs, as shown on the drawings, having suitable locks, knobs, bolts, &c., complete. (See detail drawing, No. 8.)

The antæ must be cast perfectly true and straight, or their surfaces planed or turned to make them so. All the bearing joints, antæ, girders, beams, window-frames, &c., must be turned, planed, or fitted perfectly true to each other. All the grooves for receiving doors, sash, shutters, &c., must be planed true and straight.

The iron-worker must furnish, construct, and put up, with such assistance as the mason should give in his part of the work, the stairs, of wrought and cast iron, in two flights, from the entrance to the third story, and one flight from the third to the half story above. From the end of the passage in this half story he must construct a flight of stairs, (not shown on the lithograph drawing plans,) 3 feet wide, to the attic floor, and from thence to the scuttle on the roof, by which it may be approached for any purpose. The

steps and risers must be not less than ⅞ thick, properly moulded, wrought, and corrugated, and securely fastened to the brick walls, having properly moulded balusters secured to the steps by nuts and screws, and supporting a mahogany rail, to be put on by the carpenter.—(See detail drawing, No. 9.)

He must construct and put up a galvanized, corrugated iron roof, upon a proper iron frame, supported upon the iron beams of the ceiling of the upper story, and properly secured to them and to the walls of the building. It must have proper skylights inserted in it to properly light and ventilate the half story at the east end; and it must also have suitable eave gutters, scuttle, &c., complete, moulded and fitted as per detail drawing No. 5. He must also furnish and set in place cast-iron thresholds to all the interior doors.

He must furnish all the dowels, cramps, ties, bars, truss-rods, stirrups, bolts, and other iron work necessary to give permanency and stability to the building, of the best American iron, and as they may be wanted for use. He must do and perform all the blacksmith and iron-worker's jobbing on the building, furnishing tools, labor, and all materials for the above work to the full satisfaction of the superintendent.

CARPENTER AND JOINER'S WORK, LUMBER, ETC.

All the lumber must be of the best quality, free from unsound knots, shakes, or rots, well and thoroughly seasoned, (by kiln-drying when necessary,) and proper for the various purposes and uses for which it is destined.

The joist, or scantling, must be spruce or white pine; the floor-boards 6-4 inch heart, hard pine, not more than 5 inches in width; the doors, and other inside finishings, and window frames, must be first quality white or spruce pine; and the stair-rails and the newels, and rails of the court room, best quality of mahogany for the purpose.

The floors of all the stories must be 6-4 inch thick, milled, jointed, and matched, not over 6 inches wide, laid on scantling 3 by 4 inches, fastened to the brick-work in a thorough manner, with the spaces between them filled with cement concrete by the mason, same as the haunches of the arches, and brought up level with their tops. The scantlings must be not more than 16 inches apart, from centre to centre, and the floors blind nailed, each board to each joist or scantling. All the ceilings, and other parts of the building requiring it, must be furred, and properly prepared for lathing and plastering.

The sash of the exterior of the building must be of black walnut, properly hung with weights, and securely and properly fastened. The sash for the interior must be of the same materials, and such as require weights and fastenings are to have them, and the rest may be fastened securely and permanently in their places.

The doors must be finished as per drawings, being 7-4 inch thick, properly paneled, throughout the building, panels sunk on both sides, with moulded slips, &c., hung to the jambs by 3 best cast-iron butt hinges, 4 by 4½-inches, with 1¾-inch screws, and have 7-inch best

mortise locks, (of E. Robinson's make,) best porcelain knobs, and bronzed trimmings: the water-closet doors may be but 5-4 inch thick.

The entrance story, to be used for the post office, must be fitted up with glazed windows, with iron sash, and letter boxes between the iron antæ, with openings, &c., as per detail drawing No. 9, for delivery of letters, as the superintendent may direct.

The custom-house room must be fitted up with suitable counters, and their appendages, of mahogany, (proper for the business of the department.) The above includes suitable drawers and cupboards under the counter, but no desks nor fixtures upon it. The walls of the court room must be paneled to the height of six (6) feet from the level of the floor of the bar, finished at the base with a skirting, and at the top with an impost moulding, as per detail drawing.

The court room must be fitted with its railings, 2¼ by 3¾-inches, and newels 6 inches in diameter, and of proper heights: its judge's seat, desk, &c.; its clerk and marshal's seat, desk, &c.; its dock, witnesses' stand, spectators' seats, &c. The desks, rails, &c., must be of proper quality of mahogany. The judge's seat must be raised 3 risers of 8 inches, the clerk's one riser of 8 inches, and the jury, witness, and spectators' seats must rise 3 inches at least to each seat as they retire from the bar.

There must be constructed fly doors to the court and custom-house rooms, the frames 6-4 thick, light pannels, covered with baize, hung with 4 by 4-inch butt hinges, and furnished with knobs, springs, &c., complete.

He must construct all the wood-work and carpenter's work of the water-closets, &c., the seats of which must be of mahogany, and the reservoirs, holding 200 gallons each, over each of the water-closets, to receive the water from the city waterworks for the use of the water-closets, must be made of 2-inch plank, milled, jointed, and matched firmly, and securely put together, and fully fitted to receive the lead lining to be put in by the plumber.

He must also construct the wood-work for the post office washing room in the cellar.

The mahogany stair-rail will be 2¼ by 4 inches, wrought to pattern in the best manner.

He must construct all the centres for the arches, trimmers, &c.; furnish and put on proper guards and casings to the cut-stone work, to insure it against damage while the work is going on, and be responsible for any damage that may occur to it from neglect of such precaution; construct and put up all the necessary ventilating trunks; fully construct and complete all the other carpenter and joiner's work on the building, and do all the jobbing, &c., required of the carpenter and joiner, furnishing all the materials and executing the whole work in a faithful and workmanlike manner, to the acceptance of the superintendent.

PLASTERING STUCCO-WORK ETC.

All the ceilings must be lathed and plastered in three coats, and

finished in stucco; all the brick walls must be plastered with two coats, and, when required, divided off into ashlar, colored in imitation of granite, and left coarse-finished with the float in the best manner, so as to prevent defacement and the condensation of moisture. All the rooms must have a moulding in the angles in the ceiling, as represented on the drawing No. 7.

All of the materials must be of the very best quality for the purpose, and all the work, including the necessary jobbing, must be executed in the most workmanlike manner, to the acceptance of the superintendent.

PAINTING AND GLAZING.

All the glazing must be done with the best quality of American crown glass, well bedded, back puttied, and left clean and perfect on the completion of the work.

The number of lights, sizes, &c., as indicated on the drawings.

All the exterior iron-work of the building must be painted four coats of best quality New Jersey zinc paint, sanded in two coats, except roof, and finished in imitation of granite.

All the interior iron-work must have four coats of the above zinc paint, finished in imitation of bronze, or otherwise, as may be directed, and have two coats of varnish.

All the wood-work, except the floors and mahogany work, usually painted in such buildings, must be painted three coats pure white lead, properly toned, and pure linseed oil, and grained in oil colors in imitation of wood or marble, as may be directed by the superintendent.

All the graining must have two coats of best copal varnish, and the mahogany work, coats sufficient to give it proper body, and be polished in the best manner.

All the floors must be oiled in the most thorough manner, and, if thought necessary, varnished with one coat.

The painter must "fresco" in the best manner the ceilings of the vestibules of the post office, custom-house, and court room, and the ceilings, and so much of the walls of the custom-house and court rooms as may be required of him.

PLUMBER'S WORK.

The reservoirs over the water-closets must be lined in the most perfect manner with best eight-pound milled lead. If required, there must be, in a proper location, *forcing* pump of best kind and construction, for supplying the water-closet cisterns, &c., with water from the city waterworks.

The plumber must construct (with the exception of their carpenter's work) ten (10) water-closets, mentioned in the former part of these specifications, and as shown on the plans, with all their fixtures complete, including supply, soil, and waste pipes, bowls, traps, basins, and urine-sinks, with their supply and waste pipes, &c.; and also the necessary cistern-bowls, basins, pipes, &c., for the post office wash room in the cellar.

The soil-pipes must be made of best eight-pound milled lead, and lead into the drains, and all the other pipes must be of the best and heaviest kind, and fully equal to the greatest pressure ever to be put upon them. The plumber must secure the whole apparatus from the frost, and be responsible for any defect in their operations, furnish all the materials of the best quality, and do and perform all the plumber's work, jobbing, &c., upon the building, to the satisfaction and acceptance of the superintendent.

GENERAL CONDITIONS.

All the work must be done in *the best and most workmanlike manner*, of proper and appropriate material, according to the plans hereinbefore cited and the foregoing specifications: and everything necessary to the proper and complete execution of said plans must be done and finished, whether the same may have been herein specified or not; and all such necessary work or materials which may not have been set forth in these specifications must be done, and materials furnished, in a manner corresponding with the rest of the work, as well and as faithfully as though the same were herein particularly described and provided for.

Every part of the building must be executed under the supervision of the forementioned superintendent, and be subject to his entire approval; and in case any omissions, additions, or alterations of the plans may be required by the Treasury Department during the progress of the work, the same shall be acceded to by the contractor or contractors, and carried into effect without in any way violating or vitiating any contract which may have been made for work or material; and all such omissions, additions, or alterations shall be estimated for, and the value thereof agreed upon and approved by the department, and added to or deducted from the contract by indorsement upon its back, as the case may be, before going into execution, or no allowance will be made for them by either party.

MANNER OF MAKING BIDS.

In making bids for the above work the department specially requires them to be made in detail; that is, by bills of parcels of each article and separate kind of work, to which the prices of such article and kind of work are to be affixed, respectively, and then comprised in one gross amount.

OFFICE OF THE CONSTRUCTION OF BUILDINGS,
Treasury Department, May 14, 1855.

Exhibit B.

This contract, made and entered into between James Guthrie, Secretary of the Treasury, for and on account of the United States of America, of the first part, and O. B. & O. S. Latham, assignees of Edwin B. Soule, of Oswego, New York, to whom was awarded

the erection of the building authorized to be constructed at Oswego, New York, for a custom-house, post office, &c., on his bid for the same, received under the advertisement of the Treasury Department of 13th April, 1855, of the second part, witnesseth:

The parties of the second part covenant and agree to and with the party of the first part, for themselves, their heirs, or administrators, to furnish and deliver all the materials, and do and perform all the work required to construct and complete the building to be erected at Oswego, N. Y., for a custom-house, post office, &c., agreeably to the original drawings and specifications, under the direction of the superintendent to be appointed by the Secretary of the Treasury for that purpose, and in conformity to the lithographed copies of the drawings of the several parts thereof, numbered one, two, three, four, five, six, seven, eight, and nine, and the printed specifications according to the general conditions appended thereto, prepared at the office for the construction of buildings, under the Treasury Department, and dated April 13, 1855, a copy of which is hereunto attached, which, together with the drawings aforesaid, are made a part of this contract, equally binding as if more particularly incorporated herewith, the whole subject to such omissions, additions, and alterations as may be determined upon by the said party of the first part, as provided for by the "general conditions" of the specifications hereto annexed.

And the said parties of the second part further agree and bind themselves, their executors, administrators, and assigns, to do and complete the entire work, according to the plans and specifications as aforesaid, and to the approval and acceptance of said superintendent, to be appointed as aforesaid, and deliver the same over to the said superintendent in complete and perfect condition, conformably to the plans and specifications as aforesaid, on or before the 30th day of September, eighteen hundred and fifty-seven.

And the said party of the first part, Secretary of the Treasury as aforesaid, doth covenant, promise, and agree, well and truly to pay, or cause to be paid, unto the said parties of the second part, their heirs, executors, administrators, or assigns, the sum of seventy-seven thousand two hundred and fifty-five dollars, ($77,255,) good and lawful money of the coin of the United States, the payments to be made in the following manner, viz: ninety per cent. ($.90) of the value of work done and materials furnished (said amount to be ascertained and duly certified to the department by the superintendent) will, in consideration of the above premises, be paid from time to time, as the work progresses, and ten per cent. ($.10) be retained, until the completion of the work and its approval and acceptance, as aforesaid, by the said superintendent.

And it is further agreed, by and between the parties to these presents, that if, from any cause whatsoever, the said parties of the second part should fail to carry on the work with the required promptness, in the opinion of the said superintendent, to insure its completion by the time specified above, it shall become the duty of the said superintendent, and he shall be and is hereby authorized and empowered, after eight day's due notice thereof, in writing, left at the shop, office,

or usual place of abode of the said parties of the second part, or with their agent, without effect, to purchase and procure the necessary materials, and have the necessary work performed, to supply any deficiency caused by the delinquency of the said parties of the second part, and the actual cost thereof, together with fifteen per cent. thereon, shall be deducted from any moneys due or owing to the said parties of the second part, on account of this contract; and if there is not that amount due them thereon, their bondsmen are to be held liable for any deficiency, to be recovered of them by suit in the name of the United States.

It is also covenanted and agreed by and between the parties to this contract, that the parties of the second part shall execute, with two or more sufficient sureties, a bond to the United States, in the sum of fifteen thousand (15,000) dollars, conditioned for the faithful performance of this contract, and the agreements and covenants herein made by the parties of the second part.

It is also covenanted, agreed, and understood, that no member of Congress, or other person, whose name is not at this time disclosed, shall be admitted to any interest in this contract.

It is further covenanted and agreed, by the parties hereto, that this contract shall not be assigned, except by consent of the Secretary of the Treasury, and that any assignment thereof, except as aforesaid, will be a forfeiture of the same, and shall subject the said parties of the second part, and their bondsmen, to such damages, to be recovered of them by suit in the name of the United States, as shall have been suffered by the said party of the first part.

It is further agreed and understood that the stone to be used shall be Cleveland white stone of the best quality, and whatever style of cutting is adopted, it is to be executed in the best manner of that style, and to the approval and entire satisfaction of the superintendent.

It is also covenanted and agreed, by and between the parties hereto, that in case any additions, omissions, or alterations are determined upon, the same shall be specifically noted hereon, and the amount to be paid or deducted therefor agreed upon and stated.

It is also covenanted and agreed, by and between the parties hereto, that if any materials shall be delivered on the site of the said custom-house, post office, &c., by the parties of the second part, and estimated, and a per-centage paid thereon, by the party of the first part, before they are put in the building, they shall become the property of the United States, and being delivered to the superintendent, shall be worked into the building as it progresses.

In witness whereof, the said James Guthrie, Secretary of the Treasury as aforesaid, for and in behalf of the United States, hath hereunto subscribed his name and caused the seal of the Treasury [SEAL.] Department to be hereunto affixed; and the said O. B. & O. S. Latham, of Seneca Falls aforesaid, have also hereunto subscribed their names and affixed their seals, this 7th day of April, 1855.

In the presence of— JAMES GUTHRIE.

A. FAILING. O. B. & O. S. LATHAM. [L. S.]

As to the Secretary—R. F. MORGAN.

Specifications for building the custom-house at Oswego, New York, including accommodations for a post-office and United States court-room.

[Prepared at the office of the Construction of Buildings, Treasury Department, Washington, D. C.]

Specifications for erecting a new custom-house at Oswego, New York, including accommodations for a post-office and United States court-room, which is to be done (under the direction of a superintendent appointed by the honorable Secretary of the Treasury for that purpose) according to the following enumerated drawings, consisting of plans, elevations, sections, and working drawings, designed and prepared at the office of the Construction of Buildings, Treasury Department, and agreeably to such further drawings and directions in explanation thereof as may hereafter, from time to time, be furnished therefrom:

DRAWINGS.

No. 1. Plans of foundations, cellar, and entrance story.
2. Plans of second and third stories.
3. Front and end elevations.
4. Longitudinal and transverse sections.
5. Drawing and details of roof.
6. " " exterior.
7. " " interior.
8. " " windows and doors.
9. " " miscellaneous finishings.

GENERAL DESCRIPTION OF THE WORKS.

The building will front upon Onedia street, its front line being thirty (30) feet from said street, and central between First and Second streets. The entrance story floor will be seven feet and above the inside line of the sidewalk of the premises at the central point between First and Second streets. The premises must have a proper grade up to the building from the sidewalk; and the steps and underpinning of the building must be made to conform to said grade—the first in their number, and the last in its height—instead of (in that respect) conforming to the drawings. The steps at the east end, must also have suitable iron hand-rails and balusters, if required.

On the sides and ends of the building, there will be sunk *areas*, or *skylights*, to each cellar window, extending from the top of the sidewalk down to the bottom of their sills. They will be covered with a suitable and substantial *wrought-iron* grating, let into a rebate into a suitable curbstone, which must surround them, and be there properly secured.

The walls of these areas will be rough-coursed ashlar, twelve (12) inches thick, resting on a foundation eighteen (18) inches thick, which must go below the action of the frost. The top of the wall must be finished to receive the curbstones in a proper manner. The bottoms of the areas must be paved with brick, and each be pro-

vided with a small drain, to discharge, outside of the walls, into the ground, any water that may fall into them through the grating.

The sidewalks of the two streets, and the approaches to the building from them, must be paved either with the best hard paving brick, or stone flagging, laid to a curbstone of the best material and form to be obtained in the vicinity.

A brick wall will divide the post office packing room from the post office wash room and the fuel and furnace room in the cellar, and iron stairways must come down from the entrance story into each of the two last rooms.

The cellar walls must be constructed of proper cellar wall stones, laid in courses, upon foundations of large stones laid in the most perfect manner, on a bed of concrete, (if required for its proper stability,) and otherwise fully secured against any settlement. The window and door jambs, and heads in the cellar wall, must be rough-hammered and rebated to receive the window frames and sashes, and the doors, or doors and frames, as may be found to be best. The stones for the foundations should be of the largest size convenient to be obtained, and those for the cellar walls should be of the best, and most proper size for the work. They should be bonded together in the strongest manner, full flushed with cement mortar, and well bedded in the same.

The entire exterior of the building will be faced with the most durable stone to be obtained in the vicinity, including the door and window dressings, the belt courses, cornice, &c. The stone-work of the building must be well and properly dressed, with good surfaces, and arrises, the joints small and well pointed, the beds and builds full to the square, and perfect, and the whole to be left clean and perfect, on the completion of the building.

The outside doors, and the bead of the window frames, and the window shutters and their frames, must be of iron.

The floorings of the whole building are to be composed of small segmental arches, of hard-burned brick work, turned from *wrought*-iron beams resting upon the exterior walls, and upon girders supported by *cast*-iron columns, and by the said walls, the whole covered with *tile* or southern pine flooring plank or boards. The ceiling of the upper story must also be composed of iron beams and brick arches, their haunches brought up with suitable material so that there shall be a descent from the centre of the building to the eaves of not less than three (3) inches over each beam, and the whole covered with "asphalt," to carry off any water that may percolate through the iron covering of the roof. The columns resting upon stone foundations below the cellar paving must extend up through the cellar and the several stories and support their floors and ceilings.

The thickness of the brick-work of the arches must be the width of a brick. Proper scantling furnished and put in by the carpenter, with such aid as may be required from the bricklayer, must be laid and fastened on the brick-work, to receive the floor and nail it to; while, at the proper time, the bricklayer must fill in the haunches of the arches and spaces between the scantling up to a level with their top, with concrete of cement mortar, brickbats, coarse gravel, &c.,

and make it level and proper to receive the floors of wood. In such floors as are to be covered with stone, or marble tile, the scantling must be left out.

A flue for ventilation is to be made from the upper part of each room throughout the building; they are to go up to the attic, and thence be carried by wooden trunks to the chimney tops without smoke flues, and through them to their tops, and must have an Arnott's ventilating register to each flue.

Wooden blocks must be walled in wherever required, to which to secure the jamb casings and other wood-work.

The floor of the cellar must be paved throughout with the best paving brick, upon a bed of concrete six inches thick, in the very best manner, with granite inside doorsills to all the cellar doors.

The entrance hall and vestibule to the post office in the first story, the vestibules and entrance to the custom-house and rooms in the second story, and the vestibules and passages to the court rooms and its offices in the third and half stories, must be paved with the best quality 2-inch marble, or German tile, laid in diagonal courses with cement mortar, in tesselated manner, with colors, dark and light, alternating.

A sewer, eighteen (18) inches in diameter, must be constructed to the nearest city sewer, (agreeably to the municipal laws and regulations of the city of Oswego,) through which the soil from the water-closets, &c., and the waste water from the premises can be discharged.

Drains must be constructed leading from the eave conductors and soil pipes of the water-closets and sinks to the above sewer as may be directed by the superintendent. They are to be 10-inch, interior diameter, barrel drains of 4-inch brick-work laid in cement. They must be thoroughly plastered throughout on their inside, and where they go through the foundations be constructed in connextion with them, and fully secured against frost.

All the partitions in the building will be 9 and 11-inch hollow brick walls. On the delivery of the iron-work at the building, the mason must furnish the necessary rigging, staging, labor, and tools not belonging to the iron-worker or blacksmith's trade, to put the same into its place, and do and perform all the work necessary thereto, except what belongs to the said trades, being assisted therein by said tradesmen, who must in all cases do and perform all the work properly pertaining to their respective trades in said iron-work, the mason being responsible for its proper insertion and permanency in the building.

The upper story, at the west end, must be divided into two stories by the insertion of an intermediate flooring shown only on the longitudinal section, (No. 4.) The plan and finish of the upper rooms must be similar to those under them, as shown on drawing No. 4.

The stairways to the building must be of *wrought* and *cast* iron-work, with a mahogany hand-rail, in two flights, extending from the entrance story to the upper and upper half story. From the upper half story to the attic and from that to the roof there must be constructed an enclosed flight of stairs, three (3) feet wide, with small

iron hand-rail, as directed by the superintendent, (but not shown on the drawings,) by which the roof may be approached for any purpose. The cellar stairs must be of iron, (as above,) and with proper sized iron hand-rail.

There must be two (2) water-closets in the third story, and two others over them, all of which must be furnished with proper and necessary spring seats, bowls, traps, urine sinks, &c., complete; also with tanks, and cisterns capable of holding, on an average, two hundred (200) gallons of water to each closet, placed immediately over them, and receiving their supplies from the roof, or from the well on the premises when the roof does not furnish the necessary quantities. All their main and supply pipes, &c., must be inserted in the brickwork as it goes up, and be fully secured against the action of the frost, and a channel left to receive the soil pipe, which, when put in, must also be fully guarded and secured against the action of the frost.

At the rear end near the corners of the building, there must be inserted in the outside walls two cast-iron eave conductors, *five* (5) inches in diameter, and *half* ($\frac{1}{2}$) an inch thick, extending from the eaves to the aforementioned drains, to convey the water to them; these pipes must be fully secured against the action of the frost.

There must also be another water conductor, *three* (3) inches in diameter, from the eaves to the cisterns of the water closets in the upper stories, for use in warm weather, with the necessary apparatus to close it during cold weather.

The conductors must be put up in sections, with their proper eave pipes, turns, and elbows, as the work progresses, and have their joints well calked and secured with lead.

From the well on the premises, proper supply-pipes must be extended to all parts of the building, with a suitable and approved forcing pump, of a sufficient power and capacity to properly distribute the water as above, placed and secured in the most convenient location on the premises.

On the rear of the premises there must be constructed a suitable building for privies, &c., for the use of the building. The exterior and partition walls must be of brick, the floors of flagging stone, and the roof slated. It must contain ten divisions, 3 by $4\frac{1}{2}$ feet, with a passage in front of them $3\frac{1}{2}$ feet wide, and be 10 feet deep. It must be constructed with the necessary doors, windows, seats, boxes, urinary sinks, ventilating flues, &c., required, and be fully completed in the best manner.

DIGGING, GRADING, ETC.

The necessary excavation for putting in the foundation, cellar walls, and all other works of a similar nature pertaining to the building, must be done promptly, and as directed by the superintendent.

The spaces on each side of the foundation walls and outside of the exterior cellar walls must be filled in with proper earth, and thoroughly rammed throughout; the inside must be brought up to within six inches of the paving of the cellar, and properly prepared

to receive the concrete bed, which must be laid on it, and but the exterior filled with proper earth up to the proper grade line of the premises, as may hereafter be more definitely determined.

All the surplus earth and material that may come out of the cellar and trenches not required for the purpose of grading must be carted away; and all the rubbish that may accumulate during the progress of the work must be carted away, or deposited on the ground and properly graded, as the superintendent may direct. On the completion of the work all the streets and grounds must be cleared up, and such disposition made of all the refuse materials as may be directed.

STONECUTTER'S, MASON, AND BRICKLAYER'S WORK.

The cement mortar must be composed of materials of the best quality; the hydraulic cement to be fresh burned, perfectly ground, securely put up, and kept dry until used; and the sand of suitable size for the various purposes, clean, and sharp-gritted. The lime for the lime mortar must be fresh and *wood-burned*, and the sand of best quality, proper sized, and sharp-gritted.

When the above materials are wanted for use, they must be well and properly mixed for their several purposes, and thoroughly manipulated, as may be directed by the superintendent, and the mortar used in its most perfect state for the purposes required.

The brick must all be of the best quality, firm in texture, hard-burned, and laid in the most solid manner.

The bidder must furnish to the Treasury Department a sample of the stone which he proposes to put into the exterior of the building. It must be a *cube* of six (6) inches square on each face, and five of its six faces wrought in the several manners of working the stone in the vicinity, and the sixth face left as a split, rough surface, with half of an inch at each edge, tooled or chiseled straight and true.

All the stone-work must be laid with full flushed joints, in cement mortar, the joints raked out, to receive the *pointing*, while the mortar is sufficiently moist for the purpose, and the *pointing* must be done when the work shall have become sufficiently dry to allow of its being properly performed.

Three-quarters of the ashlar of the first story must be fourteen (14) inches thick from its face, and the other quarter, as headers and binders, from eighteen (18) to twenty (20) inches thick. In the second story, the rustic corners must be from thirteen (13) to seventeen (17) inches thick from their face; three-quarters of the remainder of the ashlar must be ten (10) inches thick, and one fourth, as headers and binders, from fourteen (14) to eighteen (18) inches thick. In the third story the rustic corners must be from twelve (12) to sixteen (16) inches thick from their face; three-fourths of the remainder of the ashlar nine (9) inches, and the residue, as headers and binders, from thirteen (13) to seventeen (17) inches thick.

The piers of the doorways must be in three blocks, the *base* being one, the *shaft* another, and the *capital* the third. The stones, composing the window, and door dressing, the *belt courses*, and cornice

must have proper beds, and be of sufficient width to insure permanency in the contruction, and safety in setting and securing them in their places. All the stone must be properly cramped, and anchored to one another, and also the brick-work, by cramps, furnished by the iron-worker. They must be properly let into, and bedded in the stone, and secured with brimstone, in the best manner by the mason.

All the stone-work must be backed up with brick-work, in cement mortar, with a space of two (2) inches next to the inner course towards the rooms, which must be tied to the walls by *headers*, every fifth course, at intervals of two bricks. When heavy weights come on the exterior walls, the open space must be made solid a sufficient distance around it to insure proper stability to receive the weight imposed; and when a girder or beam rests on the wall, a *cast-iron* wall-plate, furnished by the iron-worker, of proper size and thickness, must be inserted under them.

The fireplaces must be made with fire-brick, and have a marble mantel, to be worth $30 each, exclusive of their setting; and, if required, coal grates, (worth $15 each, exclusive of their setting,) with all the requisite fixtures, must be furnished, and properly set in each fireplace. The hearths must be best quality, fire-proof stone, for the purpose, twenty inches wide from the face of the mantel, and five feet six inches long.

There must be constructed in the cellar one or two furnaces, (as may be thought best,) of sufficient power and capacity to warm the entire building, furnished with the necessary cold-air trunks and tin hot-air flues, of proper and sufficient size, leading to all the rooms; and, when necessary, or required, they must be carried up through the antæ, chimney, &c. The whole to be finished complete, and put up in good working order, with all the hot-air registers, &c. In the entrance story, 5 hot-air registers 15 by 19 inches; in the second story, 2 ditto 15 by 19 inches, and 4 ditto 11 by 15 inches; in the third story, 2 ditto 15 by 19 inches, and 4 ditto 11 by 15 inches; and in the half story, ditto 11 by 15 inches—all which must be inserted in soapstone frames. The walls, throughout the entire work, must be carried up in regular horizontal courses, not exceeding three (3) feet in height, unless otherwise directed by the superintendent.

Suitable coal-slides, to lead to the cellar, must be constructed, from the sidewalks, with proper covers, &c.

The mason must give the price per thousand for laying any extra brick-work required.

The contractors must furnish all the stone, brick, mortar, labor, staging, and all other materials incident to the stone-work, mason work, and bricklayer's work on the buildings; do and perform all the jobbing pertaining to the brick, stone, and mason's work, required in completing this building, or its appurtenances, without any extra charge for the same; and perform all the work in the best manner, to the acceptance of the superintendent.

IRON-WORK.

There will be in the cellar twelve (12) round columns, sixteen (16) inches at their base, and fourteen (14) at their necks, and three-fourths ($\frac{3}{4}$) of an inch thick. In the entrance story, there will be ten (10) square antæ, in the second story eight, (8,) and four, (4) in the third story, twelve (12) inches square, and three-quarters ($\frac{3}{4}$) of an inch thick. In the entrance story there will be ten (10) round columns, and in the third four, (4,) fourteen (14) inches diameter at their bases, and twelve (12) inches at their necks. All the above will have capitals and bases, as shown on the drawings.—(Vide "detail" drawings.)

There will be furnished by the Treasury Department the following wrought-iron *beams* and *girders* for the floors and ceilings, viz:

18	girders,	18	feet	6	inches	long, 16 inches deep.	
24	"	15	"	0	"	16	"
144	beams,	20	"	9	"	shape of drawing.	
62	"	15	"	0	"	"	

together with the cramps necessary for the proper securing of the beams and girders together, and to the walls of the building, as shown in detail drawings. They will be delivered upon a suitable wharf, at Oswego, by the department, and, by the contractor, taken thence and put into the building.

The window-shutter casings are to be of cast-iron, but the shutters must be of wrought-iron, properly hung to the frames, having suitable fastenings, &c., complete. The outside doors must also be constructed of wrought-iron, properly hung to the frames, or to the stone jambs, as shown on the drawings, having suitable locks, knobs, bolts, &c., complete. (See detail drawing, No. 8.)

The iron-worker must furnish to the mason as he may need it for use, all the iron-work mentioned in the former part of these specifications as to be furnished by the iron-worker, and the mason or bricklayer must insert the same in the building as it progresses.

The antæ must be cast perfectly true and straight, or their surfaces planed or turned to make them so. All the bearing joints, antæ, girders, beams, window-frames, &c., must be turned, planed, or fitted perfectly true to each other. All the grooves for receiving doors, sash, shutters, &c., must be planed true and straight.

The iron-worker must furnish, construct, and put up, with such assistance as the mason should give in his part of the work, the stairs, of wrought and cast iron, in two flights, from the entrance to the third story, and one flight from the third to the half story above. From the end of the passage in this half story he must construct a flight of stairs, (not shown on the lithograph drawing plans,) three feet wide, to the attic floor, and from thence to the scuttle on the roof, by which it may be approached for any purpose. The steps and risers must not be less than three-eighths thick, properly moulded, wrought, and corrugated, and securely fastened to the brick walls, having properly moulded balusters secured to the

steps by nuts and screws, and supporting a mahogany rail, to be put on by the carpenter.—(See detail drawing, No. 9.)

He must construct and put up a galvanized, corrugated iron roof, upon a proper iron frame, supported upon the iron beams of the ceiling of the upper story, and properly secured to them and to the walls of the building. It must have suitable eave gutters, scuttle, &c., complete, moulded and fitted as per detail drawing No. 5. He must also furnish and set in place cast-iron thresholds to all the interior doors.

He must furnish all the dowels, cramps, tiers, bars, truss-rods, stirrups, bolts, and other iron work necessary to give permanency and stability to the building, of the best American iron, and as they may be wanted for use; and any delay from want of delivery, shall subject the contractor to a deduction of twice its value from his compensation for work performed and materials furnished. He must do and perform all the blacksmith and iron-worker's jobbing on the building, furnishing tools, labor, and all materials for the above work to the full satisfaction of the superintendent.

CARPENTER AND JOINER'S WORK, LUMBER, ETC.

All the lumber must be of the best quality, free from unsound knots, shakes, or rots, well and thoroughly seasoned, (by kiln-drying when necessary,) and proper for the various purposes and uses for which it is destined.

The joist, or scantling, must be spruce or white pine; the floor-boards 6-4 inch heart, hard pine, not more than 5 inches in width; the doors, and other inside finishings, and window frames, must be first quality white or spruce pine; and the stair-rails and the newels, and rails of the court room, best quality of mahogany for the purpose.

The floors of all stories must be 6-4 inch thick, milled, jointed, and matched, not over 6 inches wide, laid on scantling 3 by 4 inches, fastened to the brick-work in a thorough manner, with the spaces between them filled with cement concrete by the mason, same as the haunches of the arches, and brought up level with their tops. The scantlings must be not more than 16 inches apart, from centre to centre, and the floors blind nailed, each board to each joist or scantling. All the ceilings, and other parts of the building requiring it, must be furred, and properly prepared for lathing and plastering.

The sash of the exterior of the building must be of black walnut, properly hung with weights, and securely and properly fastened. The sash for the interior must be of the same material, and such as require weights and fastenings are to have them, and the rest may be fastened securely and permanently in their places.

The doors must be finished as per drawings, being 7-4 inch thick, properly paneled, throughout the building, panels sunk on both sides, with moulded slips, &c., hung to the jambs by 3 best cast-iron butt hinges, 4 by 4½-inches, with 1¾-inch screws, and have 7-inch best mortise locks, (of E. Robinson's make,) best porcelain knobs, and bronzed trimmings; the water-closet doors may be but 5-4 inch thick.

The entrance story, to be used for the post office, must be fitted up with glazed windows, with iron sash, and letter boxes between the iron antæ, with openings, &c., as per detail drawing No. 9, for delivery of letters, as the superintendent may direct.

The custom-house room must be fitted up with suitable counters, and their appendages, of mahogany, (proper for the business of the department.) The above includes suitable drawers and cupboards under the counter, but no desks nor fixtures upon it. The walls of the court room must be paneled to the height of six (6) feet from the level of the floor of the bar, finished at the base with a skirting, and at the top with an impost moulding, as per detail drawing.

The court room must be fitted with its railings, $2\frac{1}{4}$ by $3\frac{3}{4}$-inches, and newels 6 inches in diameter, and of proper heights; its judge's seat, desk, &c.; its clerk and marshal's seat, desk, &c.; its dock, witness stand, spectators' seats, &c. The desks, rails, &c., must be of proper quality of mahogany. The judge's seat must be raised 3 risers of 8 inches, the clerk's one riser of 8 inches, and the jury, witness, and spectators' seats must rise 3 inches at least to each seat, as they retire from the bar.

There must be constructed fly doors to the court and custom-house rooms, the frames 6-4 thick, light panels, covered with baize, hung with 4 by 4-inch butt hinges, and furnished with knobs, springs, &c., complete.

He must construct all the wood-work and carpenter's work of the water-closets, &c., the seats of which must be of mahogany, and the reservoirs, holding 200 gallons each, over each of the water-closets, to receive the water from the roof or cisterns in the yard for the use of the water-closets, and other purposes, must be made of 2-inch plank, milled, jointed, and matched, firmly and securely put together, and fully fitted to receive the lead lining to be put in by the plumber.

He must also construct the wood-work for the post office washing room in the cellar, and the wood-work of the privies' building in the yard heretofore mentioned.

The mahogany stair-rail will be $2\frac{1}{2}$ by 4 inches, wrought to pattern in the best manner.

He must construct all the centres for the arches, trimmers, &c.; furnish and put on proper guards and casings to the cut-stone work, to insure it against damage while the work is going on, and be responsible for any damage that may occur to it from neglect of such precaution; construct and put up all the necessary ventilating trunks; fully construct and complete all the other carpenter and joiner's work on the buildings, and do all the jobbing, &c., required of the carpenter and joiner, furnishing all the materials and executing the whole work in a faithful and workmanlike manner, to the acceptance of the superintendent.

PLASTERING, STUCCO-WORK, ETC.

All the ceilings must be lathed, and plastered in three coats, and finished in stucco; all the brick walls must be plastered with two

coats, and, when required, divided off into ashlar, colored in imitation of granite, and left coarse, finished with the float in the best manner, so as to prevent defacement and the condensation of moisture; and, also, plaster the walls and ceilings of the privies in a proper manner, leaving the walls rough, as above. All the rooms must have a moulding in the angles at the ceiling, as represented on the drawing No. 7.

All of the materials must be of the very best quality for the purpose, and all the work, including the necessary jobbing, must be executed in the most workmanlike manner, to the acceptance of the superintendent.

PAINTING AND GLAZING.

All the glazing must be done with the best quality of American crown glass, well bedded, back puttied, and left clean and perfect on the completion of the work.

The number of lights, sizes, &c., as indicated on the drawings.

All the exterior iron-work of the building must be painted four coats of best quality New Jersey zinc paint, sanded in two coats, except roof, and finished in imitation of granite.

All the interior iron-work must have four coats of the above zinc paint, finished in imitation of bronze, or otherwise, as may be directed, and have two coats of varnish.

All the wood-work, except the floors and mahogany work, usually painted in such buildings, must be painted three coats pure white lead, properly toned, and pure linseed oil, and grained in oil colors in imitation of woods or marble, as may be directed by the superintendent.

All the graining must have two coats of best copal varnish, and the mahogany work, coats sufficient to give it proper body, and be polished in the best manner.

All the floors must be oiled in the most thorough manner, and, if thought necessary, varnished with one coat.

The painter must "fresco" in the best manner the ceilings of the vestibules of the post office, custom-house, and court rooms, and the ceilings, and so much of the walls of the custom-house and court rooms as may be required of him. He must also paint the wood-work of the privies in proper manner, and glaze the windows.

PLUMBER'S WORK.

The reservoirs over the water-closets must be lined in the most perfect manner with best eight-pound milled lead. In the cellar must be a *forcing* pump, of best kind and construction, for supplying the water-closet cisterns with water from the well on the premises.

The plumber must construct (with the exception of their carpenter's work) the four (4) water-closets mentioned in the former part of these specifications, and as shown on the plans, with all their fixtures complete, including supply, soil, and waste pipes, bowls, traps, basins, and urine-sinks, with their supply and waste pipes, &c.; and also the

necessary cistern-bowls, basins, pipes, &c., for the post office wash room in the cellar.

The soil-pipes must be made of best eight-pound milled lead, and lead into the drains, and all the other pipes must be of the best and heaviest kind, and fully equal to the greatest pressure ever to be put upon them. The plumber must secure the whole apparatus from the frost, and be responsible for any defect in their operations, furnish all the materials of the best quality, and do and perform all the plumber's work, jobbing, &c., upon the building, to the satisfaction and acceptance of the superintendent.

GENERAL CONDITIONS.

All the work must be done in the best and most workmanlike manner, of proper and appropriate material, according to the plans hereinbefore cited and the foregoing specifications; and everything necessary to the proper and complete execution of said plans must be done and finished, whether the same may have been herein specified or not; and all such necessary work or materials which may not have been set forth in these specifications must be done, and materials furnished, in a manner corresponding with the rest of the work, as well and as faithfully as though the same were herein particularly described and provided for.

Every part of the building must be executed under the supervision of the forementioned superintendent, and be subject to his entire approval; and in case any omissions, additions, or alterations of the plans may be required by the Treasury Department during the progress of the work, the same shall be acceded to by the contractor or contractors, and carried into effect without in any way violating or vitiating any contract which may have been made for work or material; and all such omissions, additions, or alterations shall be estimated for, and the value thereof agreed upon and approved by the department, and added to or deducted from the contract by indorsement upon its back, as the case may be, before going into execution, or no allowance will be made for them by either party.

MANNER OF MAKING BIDS.

In making bids for the above work the department specially requires them to be made in detail; that is, by bills of parcels of each article and separate kind of work, to which the prices of such article and kind of work are to be affixed, respectively, and then comprised in one gross amount.

OFFICE OF THE CONSTRUCTION OF BUILDINGS,
Treasury Department, April 13, 1855.

EXHIBIT II.

Referred to in the Certificate of the Court of Claims.

No. 6.

IN THE COURT OF CLAIMS.

FEBRUARY 27, 1862.

O. B. & O. S. LATHAM *vs.* THE UNITED STATES.

Opinion of the Court.

CASEY, J.

This case arises out of two separate and distinct contracts entered into between the Secretary of the Treasury on the part of the United States and the claimants for the building of two custom-houses for the use of the government—the one at Buffalo in the State of New York, and the other at Oswego, in the same State. The agreement for the Buffalo building was made on the 25th day of July, 1855, and for the Oswego house on the 7th day of April, 1856. The buildings were originally to be of exactly the same size, materials, style, and finish, and the contracts are almost in the identical words. Before these contracts were entered into with the claimants, proposals or bids were invited by the Treasury Department for furnishing the materials and executing the work according to certain plans and specifications prepared by the department, and which were furnished or at least exhibited to the bidders. Those putting in bids were required to furnish a sample of the stone of which they proposed to build the houses, presenting on the various surfaces of a cube the different styles of dressings or finish they purposed putting on the exterior of the buildings. The claimants became bidders for both of the houses, and presented a sample of Lockport stone with various styles of finish. Their bid for the Buffalo house was accepted, but the department adopted a stone called the white Cleveland stone, or "Peninsula stone," a sample of which had been presented at the Treasury Department by Charles A. Jones, who was a competitor for the work. And the contract provided that the stone to be used in the construction of the Buffalo custom-house, under the contract, should be equal in quality of material and workmanship to the sample. The contract also stipulated that the claimants were to furnish all the materials and do and perform all the work required to construct and complete the building, agreeably to the original drawings and specifications, under the direction of the superintendent appointed by the Secretary of the Treasury for that purpose, and in conformity to the lithographed copies of the drawings of the several parts, numbered from one to nine inclusive, and the printed specifications appended to the contract, and which drawings and specifications were made a part of the contract; the whole to be subject to such *omissions, additions, and alterations* as the Secretary of the Treasury might direct. And for which claimants were to receive eighty-

one thousand three hundred and forty-five dollars, ninety per centum to be paid as the work progressed and ten per cent. to be retained until the work was completed, approved, and accepted. The contract for the Oswego house was first awarded to a man of the name of Soule, but he having relinquished it, a contract similar in all respects to the Buffalo contract was entered into by the Secretary of the Treasury with the claimants for that one also for the sum of seventy-seven thousand two hundred and fifty-five dollars.

Both buildings were completed by the claimants to the satisfaction and approval of the Secretary of the Treasury and the superintendents appointed by him, and have for several years been occupied by the United States for the purposes for which they were built, and the claimants have been paid the sums named in the contracts.

The claimants now allege that in consequence of very extensive and material alterations in the building, and deviations from the contracts, drawings, and specifications, directed by the Treasury Department during the progress of the work, they were subjected to much interruption and delay, and had to incur great expenses in carrying out the alterations and deviations directed. These matters of complaint we shall now proceed to examine in the order in which they are set forth in the claimats' petition:

1st. After the claimants had commenced work on the Buffalo buildings, and had the foundation walls built and the work in active progress, the government determined to enlarge the Buffalo custom-house by the addition of two feet to its height and twelve and a half feet to each end; and to allow the necessary plans to be prepared for the enlargement and the consequent alterations of the arrangements, as well as to procure additional legislation, the department, in the latter end of November or beginning of December, 1855, directed the work to cease. The additional legislation was procured in April following, but the plans and specifications necessary to enable the contractors to proceed were not furnished by the department until the 16th June, 1856. The evidence is that the state of the weather was such during a considerable portion of the month of December that but for the directions to cease work the contractors could have proceeded during that time, and that they had the necessary workmen and materials at hand to have continued its prosecution. And but for the same reason they could have resumed active operations about the latter end of March or beginning of April, in the spring following. To be thus interrupted and delayed is evidently a considerable loss and damage to contractors whose arrangement for materials and employment of workmen were all made with reference to the continued prosecution of their undertaking. No such interruption was contemplated by the parties when the contract was made, and it occurred without fault or default of the claimants. It was at the instance and for the benefit of the government, and it appears but just and right that whatever injury or loss occurred to the claimants by the delay should be reimbursed to them by the government. But it is not, in our opinion, a case in which any remote or speculative damages should be awarded, but

only such loss or injury as the claimants could not avoid, such as the wages of workmen and artizans they were compelled to retain and pay, the loss of their own time, the non-employment of teams, with any other immediate injury or loss resulting from the delay.

2d. The next matter for which additional compensation is claimed is the manner in which they were compelled to lay the stone in the walls. There are two methods known among men skilled in the craft of laying the walls of stone buildings—the one is to lay the stone on the edge, or on the "cant," as it is called, and the other on the natural or quarry bed. The claimants insist that the usual and almost universal method practiced in this and other countries is to lay sandstone, such as this building is composed of, on the "cant," and not on the quarry bed; and that this contract was entered into by the parties in view of, and with reference to, this usage of the trade. The government contends that the contract requires the work to be done in the best and most workmanlike manner; and that to lay such stones on the natural bed is the best manner, because in that position they resist best both the superincumbent pressure and the action of the atmosphere. This being one of the main points in the cause, we have examined with great care the voluminous testimony upon this branch of the case, in which a great number of very intelligent practical workmen, with many years' experience in cutting and setting sandstone, and also eminent scientific gentlemen, have been called upon to testify in reference to the matter. And upon a careful consideration of the whole testimony, we are convinced the evidence establishes the usage as contended for by the claimants. Many workmen, who have spent their whole lives for periods ranging from ten to twenty-five years, have never seen a sandstone building erected in any other manner. Others have seen one or more erected under special contracts, specifying that the stone should be laid on their natural bed. Most of the public buildings of this country, constructed of similar materials, are laid on the edge. And until recently the government itself had no fixed method of laying them in its public buildings, the workmen placing them one way or the other, as was most convenient, or as the particular stone would work to the best advantage. Even subsequent to these contracts no settled rule had been adopted by the Bureau of Construction. Since then it has become the practice to insert in contracts of this description that the stones shall be laid on the quarry bed. Messrs. Pettes and Hatch, the gentlemen appointed by the Secretary of the Treasury as superintendents of the construction of these buildings, respectively testify that, in the absence of orders from the department to the contrary, they would have directed the stone to be laid on the edge, as a compliance with the terms of the contracts.

A custom of the trade so general, and a usage so uniform as this appears from the evidence to have been, must not only have been known to the parties, but must be presumed to have entered into and formed a part of the contracts. It is at least a fair presumption that they were made with a direct reference to this usage.

It results from this conclusion, that the Treasury Department

required the stone in these buildings to be laid in a manner different from that contemplated in the contract. How does this deviation or change affect the rights of the parties to the agreement? The solicitors for the claimants contend that this change is so radical and total as to work a rescission or abandonment of the contract, so far as regards the mason and stone work of the buildings; and that the claimants are entitled to recover for that part of the work by measure and value, irrespective of the prices fixed in the contract. It is not doubted that where a special written contract exists for the performance of work, that its terms and manner of execution may be so varied by the consent, or the acts of the parties, as to reduce the whole to a verbal, or even an implied engagement, to pay the reasonable value of the work. But it is not every modification that will have this effect. And where the parties have evinced their desire for certainty, by reducing their agreements to writing, it should require very clear and distinct proof to change their character. We understand the rule established by the best authorities in the law to be, "that where alterations or additions are ordered to be and are made to a building which a workman has contracted to finish for a certain sum, the original contract is held to exist, as far as it can be traced to have been followed, and the excess must be paid for according to the usual rates of charging. But if a man contract to work by a certain plan, and that plan be so entirely abandoned that it is impossible to trace the contract, and to say to which part of the work it shall be applied, in such case, the workman shall be permitted to charge by measure and value for the whole work done, as if no such contract had been made."—(Chitty on Contracts, 578; Pepper vs. Barland, Peake's Rep., 103; Robson vs. Godfrey, 1 Holt, 236; 3 E. C. L. Rep., 85; Story on Bailm., § 461, c. 441.) Mr. Sedgwick, in his work on the Measure of Damages, states the rule as follows: "So, when work is done under a special agreement, at estimated prices, and there is a deviation from the original plan, by the consent of the parties, the contract is made the rule of payment, as far as it can be traced, and for the extra labor the party is entitled to his *quantum meruit*."—(Sedgwick on the meas. of Dam., 233.) In referring to this same subject, Parsons says; "If the changes necessarily imply an increased price, and the employer authorizes or assents to them, he is bound to pay for them. The question may then arise, whether he is to pay for them according to the usual rate of charging for such work, with no reference to the contract, or whether he must pay only according to the rate of the contract. Some cases hold the former; but we think the better practice and the better reason in favor of the latter."—(1 Pars. on Cont., 542.) In 2 Smith's Leading Cases by Hare and Wallace, p. 42, it is said: "If there be a special contract which has been altered or deviated from in particulars, by common consent, general assumpsit will lie when the work has been performed; and in such case, if the original contract has not been wholly lost sight of in the work as executed, the rates of recompense fixed by it shall be the measure of damages as to those parts in it which it can be traced in the per-

formance; and for the new, or extra work, the recovery shall be upon a *quantum meruit.*"

The rule laid down by all these text writers has been stated almost in the very words of C. J. Gibbs, in the case of Robson vs. Godfrey, 1 Holt, 236. That case was for repairs to a ship. The repairs had been specified and estimated, and were not to exceed £620. It was in evidence that the original plan for the repairs had been varied, and that other work had been done by the order of the defendant, out of the scope of the agreement, and beyond the repairs originally contemplated by the parties. This decision has been followed by numerous cases both in England and in this country.

In Bank of Columbia vs. Patterson, admr., 7 Cranch, 299, Justice Story says: "Where there is a special agreement for building a house, and some alterations or additions are made, the special agreement shall, notwithstanding, be considered as subsisting so far as it can be traced," and cites Pepper vs. Barland, Peake's Rep., 103, as authority. We might safely rest the case upon these high authorities, but there are many others in the different States where the same rule has been laid down by eminent judges. Among others, the Supreme Court of Kentucky says: "Where deviations are made, even by consent, in general, the presumption is they are made on the basis of the contract prices."—Jones vs. Woodbury, 11 B. Mour., 169.) And the same principle is recognized by the same learned court, in Western vs. Sharp, 14 B. Mour., 177. The Supreme Court of Illinois holds the same doctrine.—(Brigham vs. Hawley, 17 Ill. Rep. 38.) The courts of the State of New York have uniformly held the same doctrine.—(Lenningdale vs. Livingston, 10 John., 36.) In Koon vs. Greenman, 7 Wend., 123, the court says, "So far as the work was done under the special contract, the prices specified in it are, as a general rule, to be taken as the best evidence of the value of the work." In Dubouis vs. the Del. and Hud. Can. Co., 4 Wend., 285, Mr. Justice Marcy states the rule almost in the words of Chief Justice Gibbs, in the case from Holt. This same case was again before the supreme court, and the doctrine sustained (12 Wend., 334) and affirmed in the Court of Errors and Appeals, (15 Wend., 87.) The same doctrine is held in Penna. Lawal vs. Rader, 12 Harris, 283; McGran vs. The R. R. Co., 5 Casey, 82, and in many other cases, which it is unnecessary to cite.

On the other hand, the rule that where the original plans or manner of performing the work has been so entirely abandoned that it is impossible to trace the contract, and to say to what part of the work it shall be applied, then the work shall be paid for by measure and value, the same as if no contract had ever been made between the parties, is equally fortified by authorities.—(1 Campb., 471; 3 Taunt., 52; 2 Marsh., 273;) together with most of the American cases cited above.

The important question, therefore, in this case is, was there such an entire and total variation from and abandonment of this contract in regard to this stonework as brings the case within the rule lost cited. If there was, then, in determining what compensation shall

be awarded to the contractors for its performance, we must entirely discard all the estimates of their proposals and the stipulations of the contract. If there was not such abandonment, then we must take the prices fixed by the contract, with a fair and reasonable compensation for the deviations and alterations required in the mode of performing the work.

When these requirements were exacted of them by the Department the claimants could have refused to proceed with the work, unless additional compensation was conceded for this more expensive mode of doing it, and in case this had been refused, have abandoned the work and rescinded the contract; for the contract requires that such alterations and additions shall be estimated for and agreed upon, and indorsed upon the contract. They elected, however, to proceed with the work, and to perform it according to the requirement, without any such stipulation. In no other part of the work do they claim that there was any material deviation. By the terms of the contract they were to be paid in installments as the work progressed. These intermediate estimates were made by the superintendents, from time to time, on the basis of the prices stipulated in the contract, and the several payments were received by them according to these estimates. It is true these intermediate estimates and payments were, so far as regarded amounts, but approximations, and as such were not conclusive; but as acts of the parties recognizing recognizing the vitality and existence of the contract, they have a direct and important bearing on the very question we are considering. But can a contract, which is entire and inadvisable in its nature and terms, be rescinded or abandoned in part, and kept in force for the residue? These contracts were "to furnish and deliver all the materials, and do and perform all the work required to *construct and complete the buildings* to be erected," &b. To my mind such a proposition appears to involve a contradiction, not to say a legal impossibility.

Is there any real difficulty in applying the rule that the terms of the contract shall govern so far as they can be traced to the circumstances of this case? Not any more, I apprenend, than occurs in every case of deviation. The buildings in style, dimensions, materials, and workmanship are identicol with the plans and specifications with the exception of the manner of laying the stone in the wall.

The enlargement of the Buffalo house comes strictly within the clause of the contract, that it is made "subject to such omissions, additions, and alterations as the Secretary of the Treasury shall direct." This, of course, must be understood and interpreted to mean that if such *additions* and *alterations* are more expensive than the original plans and specifications they shall be paid for by the government. Under this clause, the right to change the manner of laying the stone could hardly be doubted. And having been di rected under authority in the contract, it would very naturally follow that it was to be executed on the basis of the contract prices.

In a case where a contract provides for a stone building, and it

should be changed to one of wood or brick, or where the plan, dimensions, and style of the building are changed into one of an essentially different character, there, of course, the provisions of the contract could not be traced and applied, because the work actually performed bears no relation or affinity to that provided for in the agreement. But nothing of the kind obtains in this case. The contracts contemplated buildings of cut or dressed Peninsula stone of certain style and dimensions—such these buildings are—nothing more, nothing less. No deviation whatever from the plans or contracts occur in any of these general features; and we apprehend when the cases and authorities refer to such an *entire and total* change they refer to these material and essential ingredients, and not to a modification in the manner of performing the very same work. Take the circumstances of the leading case, Pepper *vs.* Burland, Peake's Cas. N., p. 103; it was an action of assumpsit for work and labor as a carpenter. The defendant proved a special agreement in which the plaintiff stipulated to do all the carpenter work of a house, of the dimensions of fifteen feet, for the defendana, according to a certain plan. The house turned out to be seventeen feet in size, but the foundation walls had been laid, and the brick work commenced before the contract with the carpenter was made. It was admitted that an alteration had been made in the roof of the house, and the defendant paid into court a sum sufficient to cover the excess. Ch. J. Kenyon says: "I admit if a man contracts to work by a certain plan, and that plan is so entirely abandoned that it is impossible to trace the contract, and to say to what part of the work it shall be applied, in such case the workman shall be permitted to charge for the whole work done by measure and value, as if no contract had ever been made; but in the present case the contract is not proved to have been wholly abandoned, for it appears the dimensions were the same when the plaintiff contracted as they were when the building was finished; the only excess was in the alteration of the roof, and money enough to cover that has been paid by the defendant into court." The jury under this direction found for the defendant. Now it will be observed that it was the excess of the cost of that roof, above and beyond the contract price, that he was held entitled to recover, and not the difference in the estimated value of the whole roof. In other words, the question was not what was the entire cost of such a roof, but what it cost to make the alteration directed. No case could more clearly illustrate the cause in hand. The question here is, not what was the stonework worth, but what did the changes and deviations cost. That the whole plan and arrangement of the stonework was departed from by the changes ordered can scarcely be pretended; and unless this was so can it be said that the contracts were *totally and entirely* abandoned?

After a careful examination of the whole case we are unable to reach that conclusion; but, on the contrary, that they remained in full force, and are to be applied to the stonework and all other parts of the buildings, and that the claimants are to be allowed a fair and reasonable sum for the excess occasioned by the alterations. This

rule is so simple and natural, and its justice so obvious, as to have secured for it recognition and and adoption by the highest and most eminent authorities in the law, and we feel neither authorized nor inclined to depart from it.

We can perceive no great difficulty in ascertaining the difference in cost between the two modes of performing the work than there would be in determining the value of the labor and materials without any standard of prices, besides the opinions of witnesses, and their experience in that description of work.

The elements which enter into the computation in this case are the great expense and wastage in quarrying the stone to be laid on the quarry bed; the difference in the expense and labor of cutting the stone upon the quarry face, instead of on the grain or quarry bed; for the waste resulting from the difficulty of splitting the stone to proper sizes; together with the additional cost of the vertical band, which was not shown on the plans exhibited to the claimants when the contracts were made, but was afterwards required.

The claimants also allege that the style of finish adopted by the department, and required of them, was not authorized by the contract, and in that view of the case we concur. The sample of Cleveland stone presented by Mr. Jones, and which was adopted by the department, did not exhibit any such style of finish known as the "patent-axe." And by the clear terms of the proposals and contract the department was restricted to such styles as were exhibited on the the sample, or at least such as was not more expensive. The witnesses concur that the patent axing was considerably more expensive than the most costly style exhibited on the sample stone, and for this difference, which the witnesses estimate at from 10 to 13 cents per foot, the claimants will be allowed, to the extent that style of dressing was put on the buildings, in addition to the contract.

In regard to the representations alleged in the petition to have been made by an agent of the Treasury Department to one of the claimants in reference to the cheapness and facility of getting the Peninsula stone, it does not appear to us to be sustained by the evidence, nor do I remember that it was pressed upon us in the argument.

The claimants had also prepared some stones to lay on the edge before the order of the Secretary of the Treasury came directing them to be laid in a different way, and for the expense and loss incurred in recutting such stones the claimants are to be allowed, together with various items of extra work, as shown by the evidence, executed by them on both the Buffalo and Oswego houses. In the statement of the account of claimants, by Mr. Hatch, the superintendent of the Oswego house, the sum of $384 28 was withheld, on account of some alleged claim of Geo. R. Jackson & Co.; but the evidence not disclosing any authority to retain the same, or any good reason why it should not be paid to the claimants, we therefore include it in our award in this case.

We are convinced that the evidenc of the claimants was taken,

and their whole preparation and presentation of their case based on a different view of the law from that which we believe to be the true rule applicable to the facts and circumstances of the cause. Their effort has been to show how much the work is worth, in measure and value, irrespective of the contract, and not the difference between the contract price and the cost of performing it in the manner required. Hence we have experienced great difficulty in reaching satisfactory conclusions on the subject of the damages, because the particular items and elements for such calculations have not been brought out in the examinations of the witnesses. But for the most part lumping conclusions, founded on the opinion of the witnesses are given. It may therefore be that, in the calculations and assessments we have made, we may have erred upon the one side or the other. And, that the parties may not suffer from this cause, we propose at the present time to file this opinion and withhold the award of damages, and to allow them, respectively, such time as they may desire, not exceeding days, to come into court, and move for leave to take additional testimony on the subject of the amount to which the claimants may be entitled under the law, as held in this opinion. Should they, however, at an earlier day suggest that they do not desire to take further testimony in the case, we shall then file our award, and direct a bill to be reported to Congress for the amount of the same.

No. 7.

IN THE COURT OF CLAIMS.

FEBRUARY 27, 1862.

O. B. & O. S. LATHAM *vs.* THE UNITED STATES.

HUGHES, J., dissenting.

I am of opinion that the plaintiffs are entitled to recover compensation for the stone work done by them according to the value of the same, independent of the contract prices.

(Chitty on Contracts, 10th Am. ed., p. 613.)

If they were not bound under the contract to lay the stone on the quarry bed, (concerning which point there is no difference of opinion among the members of the court,) then the requirement on the part of the government, that it should be so laid, was a departure from the contract, which in my opinion enables the petitioners to recover as to that part of the work, on a *quantum meruit*. An assessment of damages by that rule would result in a judgment for the claimants largely exceeding the sum allowed by the majority of the court and to which, I think, upon the evidence, they are clearly entitled.

IN THE COURT OF CLAIMS.

MAY 5, 1862.

O. B. & O. S. LATHAM *vs.* THE UNITED STATES.

Second opinion, awarding damages, &c.

CASEY, J.

We have carefully considered the additional testimony submitted by the claimants, on the subject of an allowance for change of stone, on the ground of representations alleged to have been made by Major Bowman to the claimants at the time of the letting of the Buffalo house. The evidence has failed to convince us that the claim is well founded. The conversation detailed took place between Major Bowman, Mr. Latham, and Mr. C. A. Jones, and it is impossible to say whether Mr. Latham, in agreeing to adopt the Peninsula stone, acted upon the opinion of Major Bowman or Mr. Jones, or, discarding both, was guided by his own judgment in the premises. Nor is it of any moment to inquire how he arrived at his conclusion. It was well known to Mr. Latham that Major Bowman was a public officer, having specific duties to perform and limited powers to exercise, and that it came neither within the range of his duties nor the scope of his authority to furnish information to bidders in relation to the cost and facility of obtaining the material out of which the building was to be constructed. If the bidder sought for it from him, or he voluntarily gave it, whether true or not, could affect the government no more than the same representations made by any other individual.

We have, too, the singular fact that on the 7th of April, 1856, after the claimants had procured a large amount of Peninsula stone, and had a considerable quantity of it cut and dressed for the Buffalo house, they entered into a contract for building the Oswego custom-house of the same material. If it was expensive to procure and difficult to work, they must have then been fully aware of these facts. They had also been informed the previous September, by Mr. Pettes, that they would be required to lay this stone on the quarry bed.

Taking all the circumstances together, we are unable to find anything in this record to support the claim for an allowance for a change of stone, upon the ground of fraud, misrepresentation, or mistake.

At every step towards the assessment of the damages, by the rules which the law of the case requires, we have encountered great difficulty and embarrassment; not from any defect in the rule, or any inherent difficulty in its application to the case, but from the want of being furnished with the necessary facts, and the efforts of the claimants to have their damages measured by a different standard. The case was elaborately prepared and ably argued by the learned counsel of the claimants, but the main effort has been to

maintain a theory rather than to establish facts. It was hoped by us that in taking the new testimony this would be remedied. We regret to say the result has, to some extent, disappointed our expectations. A number of the plaintiffs' principal witnesses are re-examined, and without professing or attempting to give any new facts or data restate their opinions and calculations in new phases, and in greater detail. Some of this testimony, we are compelled to say, is in a very objectionable form, consisting of affirmative answers, in monoysylables, to leading and direct questions proposing different aspects of the general theory upon which the case had been previously submitted. The mere opinion of witnesses as to the cost or value of work which has no fixed standard of prices, or market value, has been found by experience to be both unsafe and unsatisfactory, however skilful and efficient the witnesses may be. If anything were needed to illustrate its unreliability it is to be found in the wide variance of those called on the one side and the other of this case; each set being, so far as we can judge, equally competent, skilful, and credible.

If we were to follow the opinion and theory of the witnesses for the plaintiffs alone, it would result in an award to the claimants, according to a statement presented by their counsel, as items alleged to be proved by the opinions of their witnesses, of two hundred and fifty-six thousand six hundred and eight dollars and thirty-three cents, ($256,608 33.) This is claimed as extra compensation upon work which the claimants originally contracted to perform and furnish the material, for sixty-nine thousand one hundred and twenty-one dollars and sixty cents, ($69,121 60.) And this, too, it will be remembered, without any change having been made in the size of the building, the kind or amount of material, the plan and arrangement of the structures, or the general character and style of the work; but for placing the same material in the building in a different position, scaling it to regular systematic sizes, and placing on about one half the exterior surface a different finish from that provided by the contract and specifications.

This result is attained by assuming the speculative values of the witnesses as the actual cost of the work, and deducting therefrom the amount received under the contract, leaving the difference we have stated above. Upon this statement it will naturally strike any intelligent mind that either the contract price was too small or the extras claimed are too large.

The witnesses on the other side testify that, in their opinion, the difference in the two modes of performing the work was but trifling; and that a few thousand dollars would meet the whole expense. When we find gentlemen of the highest skill in their professions and trades, and whose characters stand unimpeached, differing to the amount of two hundred and fifty thousand dollars in their estimates and opinions upon this case, it must necessarily impair our confidence in the value of such testimony. While we have carefully examined and considered these opinions, we have not in any case relied implicitly upon them, except so far as they are sustained by facts proved in the cause.

We are relieved from much of the difficulty of reconciling these conflicting statements and opinions by adhering to the rule we adopted, of considering the contract prices a fair equivalent for the work and material, so far as it can be traced to have been followed, and only estimating the fair and reasonable compensation to be made for the changes, alterations, and deviations required of the contractors.

This view of the case discards alike the questions, whether the contract prices were less or more than the value of the work agreed to be done, and the actual cost of the work as it has been performed; leaving us simply to consider what shall be a fair and just reward for the changes and alterations.

We distinctly stated in our former opinion the specific matters to which the rule of law and the measure of damages, then determined, applied. These were, the additional expense and waste in quarrying the stone to be laid on the quarry bed; the difference in the expense and waste in splitting or breaking the stone to be laid in that way; the increased cost of cutting and dressidg the quarry face instead of the grain of the stone; the enhanced cost of changing from a random to a vertical bond, with a fair allowance for putting an the patent axe finish. We have discovered nothing in the additional testimony, or the very full and elaborate reargument of the cause, to shake our confidenee in the conclusions then stated. On the contrary, we are greatly strengthened in our convictions that the rule is not only sustained by the highest authorities, but that it is eminently fair and just in itself. Without such a rule there would be no limit to the ruinous and exorbitant claims for extra compensation, wherever a change or modification of a plan became necessary or desirable in the progress of a work, but the wild and speculative opinions of witnesses.

We have, however, from the first been convinced that the changes and deviations from the original plans and specification, in this case, have been attended with an addition of labor and material, increasing the cost to the contractors to a large amount. And we have earnestly endeavored, upon such facts as we could glean from this voluminous record, to award the claimants such damages as should indemnify them for all this outlay. We have considered nothing that comes within the contract. The parties arranged that for themselves, and whether it was less or more than a fair price was not for us to inquire. Our duties lay outside of that, and we have according to our best judgment and the evidence, tried to render substantial justice to the parties.

In performing this duty we have sought to ascertain, as near as we could, the cost of the stone at Buffalo and Oswego, to lay upon the "cant," and we think the weight of evidence is, that it could be obtained at Buffalo for fifty-five cents per cubic foot, and for sixty cents at Oswego. Estimating the quantity of stone in the Buffalo building at thirty-four thousand cubic feet, the cost would be eighteen thousand seven hundred (18,700) dollars. Upon this sum we have allowed for the additional labor, expense, and waste in

quarrying to lay upon the quarry bed, and of transportation, thirty (30) per cent., amounting to five thousand six hundred and ten (5,610) dollars. We have rated the cost of the cut-stone work in the building at fifty thousand (50,000) dollars, and have allowed ten per centum on that sum, for the increased expense in the change from a "random" to a "vertical bond," amounting to five thousand (5,000) dollars. We have deducted three-eighths ($\frac{3}{8}$) of the cut stone as the approximate quantity that would have been laid on the quarry bed in any event, and on the residue, or twenty-one thousand cubic feet, we have allowed ten (10) cents per cubic foot for additional labor in breaking across the grain and cutting on the quarry face, amounting to two thousand one hundred (2,100) dollars. For 1.556 superficial feet of patent axe finish we have added twelve cents per foot, or one thousand eight hundred and sixty-seven dollars and ninety-two cents, ($1,867 92.) Upon the aggregate of these sums we have added 15 per cent. as contractors' profits amounting to two thousand one hundred and eighty-six dollars and sixty-eight cents, ($2,186 68.) We have also allowed the claimants for delay, by reason of the stopping of the work in the fall of 1855 and spring of 1856, the sum of one thousand eight hundred and twenty-nine (1,829) dollars. For recutting stone for the first and second base courses, after the order to lay them on the quarry bed, we have given the claimants two hundred and fifty (250) dollars. For items of extra work, ordered by the Government, and not included in the settlement of claimants' accounts, eight hundred and seventy-three (873) dollars; making the total award for the Buffalo custom-house and extension twenty thousand seven hundred and sixteen dollars and sixty cents, (20,716 60.)

We have adopted the same basis of calculation in respect to the Oswego building; and find the damages resulting to the claimants from the changes ordered, including fifteen per cent. for profit, amount to fourteen thousand three hundred and eighty-three dollars and nine cents ($14,383 09.) We also find due to the claimants, for extra work and material, tiling, flagging, &c., the sum of one thousand three hundred and forty-one dollars and twenty-five cents, ($1,341 25;) making the sum due for the Oswego building fifteen thousand seven hundred and twenty-four dollars and thirty-four cents, ($15,724 34,) which together with the amount awarded for the Buffalo custom-house, amount in the aggregate to thirty-six thousand four hundred and forty dollars and ninety-four cents, ($36,440 94.) In this assessment we have allowed as contractors' profits, beyond what we deemed the actual cost of the changes ordered, fifteen per cent.; though the claimants' witnesses, who refer to it, testify to twenty-five per cent. as a fair and reasonable profit. On contracts of this magnitude, where the government pays at the end of each month, and the operations may be carried on without investing any, or at least an inconsiderable amount of capital, where there is little, if any, risk of loss, we should think fifteen per cent. quite sufficient, and twenty-five per cent. exorbitant.

It is claimed we should add interest upon our award. The allow

ance of interest is regulated either by statute, by adjudged cases, or by usage. Congress has never passed any law to authorize interest to be paid on claims against the Government. No cases adjudged by our courts have sanctioned it. Indeed, the case of Samuel P. Todd, in this court, expressly denies it. The uniform usage of the Government has been against its allowance; and until Congress sees proper to direct otherwise, we do not see that we could with propriety depart from the established custom.

The following statement exhibits in detail the damages for the Buffalo custom-house and extension:

For vertical bond, on cost of stone work, at $50,000, 10 per cent.		$5,000 00
34,000 cubic feet of stone, at 55=$18,700, thirty per cent. for quarrying to lay on quarry bed, waste, transportation, &c		5,610 00
$\frac{5}{8}$ of stone, or 21,000 feet, cutting on quarry face, additional labor of breaking, &c, at 10 cents per foot		2,100 00
1,556 sup. feet of patent-axeing, at 12		1,867 92
Contractors' profits, at 15 per cent		2,186 68
Damages for delay	$1,829 00	
Extra work	873 00	
Recutting stone.	250 00	
		2,952 00
		20,716 60

The following statement exhibits in detail the damages awarded for the Oswego Custom-house:

For vertical bond, on cost of stone-work, at $40,000, 10 per cent.		$4,000 00
28,786 cubic feet of stone at 60=$17,271 60, add 30 per cent. for quarrying. waste, and transportation to lay on the quarry bed		5,181 48
$\frac{5}{8}$ of stone, or 18,000 feet, cutting on quarry bed, additional labor, waste, &c., at 10 cts. per foot		1,800 00
12,713 sup. feet of patent-axeing, at 12 cts		1,525 56
Contractors' profits, at 15 per cent		1,876 05
Extra work, flagging, tiling, &c		1,341 25
		15,724 34
For Buffalo custom-house		20,716 60
Total award for both buildings...		36,440 94

We are, therefore, of opinion that the claimants are entitled to relief, in respect of the Buffalo custom-house, to the amount of twenty thousand seven hundred and sixteen dollars and sixty cents, ($20,716 60,) and in addition thereto, and in respect of the Oswego custom-house, to the amount of fifteen thousand seven hundred and twenty-four dollars and thirty-four cents, ($15,724 34,) and, together, amounting to the sum of thirty;six thousand four hundred and forty dollars and ninety-four cents, ($36,440 94,) and for which last men-

tioned sum we direct that a bill be reported to Congress in favor of the claimants.

NOTE.—Hughes, J., having differed with the majority of the court, in regard to the rule of damages, took no part in making this assessment.

Supreme Court

OF THE UNITED STATES.

OBADIAH B. LATHAM AND OLIVER S. LATHAM.

versus

THE UNITED STATES.

Points.

I.

It is contended that the Act of February , 1862, authorizing the issuing of what are denominated "legal tender notes," is in conflict with the Constitution of the United States, and is void.

The only legal currency known to the Constitution of the United States is *metallic coin*.

a. The power delegated to congress is express "to *coin money*, regulate the value thereof and of foreign coin, and to fix the standard of weights and measures." Sub. div. 5, Sec. 8. This is the only power conferred upon congress to provide a currency for the country.

b. This is not a power which admits of an incident or a choice of means. It is a fixed, specific, single act, admitting of no incidental aids. To print a piece of paper is not coining money;

but to give the paper so printed the character or value of money, is the substitution of a power not conferred, for one that is.

c. The Constitution must be interpreted according to the natural and common import of its words. We are not to give the words of the Constitution an artificial or uncommon meaning, for they were employed by the framers of the instrument in their natural and customary sense.

Fairfax *v.* Hunter's Lessees, 1 Wheat., 304.
Gibbons *v.* Ogden, 9 Wheat.

d. Nor is the language or meaning of the Constitution at all changed by a state of war, by external or internal convulsions, by the temper of the times or the rise and fall of political parties. It is as fixed and immovable as a rock, resisting the mad surges of political passion, and standing unmoved amid the storms and tempests of war and the serene and benign calms of peace.

Vanhorn's Lessees *v.* Dorrance, 2d Dal., 304.

The power must be *granted* or it cannot be *exercised.*

United States *v.* Fisher, 2 Cramp., 358.

e. The words "*coin and to coin,*" have a certain and fixed meaning, well understood, and admitting of no doubt or ambiguity. "*Coin*" is "a piece of gold or silver, or other metal, stamped by

authority of the government, in order to determine its value, commonly called money."

Co. Litt., 207.
Rutherford's Inst., 123.
Bouv. Law Dic., 240.
Webster's Dic., 158.

f. "To coin," is to stamp metal. No other signification has ever been attached to the word *coin*, as connected with currency, and when the framers of the Constitution employed that word, they used it in its universal sense, and we are to presume that they used it with full knowledge of an established rule of construction, that the prescribing of this species of money excluded all other kinds. *Expressio unius exclusio alterius.*

g. The amendments of the Constitution also exclude any power to make a paper currency. This power not being expressly granted, is prohibited in express terms (Art. 10 of Amendments). It must be assumed, therefore, that the government of the United States, in its dealings with public and private creditors, can use but one species of money, made or issued by itself, and that is *metallic coin*. If a creditor is willing to receive bank bills, treasury notes, or any other artificial representative of value, the payment would be good as a voluntary payment; but he cannot be compelled to receive any thing but gold and silver.

II.

The right of the United States to pay a public creditor in paper promises, cannot be inferred from the 10th Sec.

of Art. 1 of the Constitution. In that section the several States are prohibited from "emitting bills of credit." It has never been held that this prohibition upon the States was a grant of power to the government of the United States. On the contrary, as a general rule, the inhibitions of the Constitution furnish the rules applicable to the general government, except in those cases where the power prohibited to the States is expressly conferred upon the United States.

a. Again, a bill of credit is a promise to pay in future, pledging the faith of the State issuing it for its redemption, and is not money. No creditor is bound to receive a promise, in payment of his debt. He is entitled to present payment in money, and not in something imposing upon him labor and expense to convert it into money, or which is redeemable at a future time. The "legal tender" notes do not purport to be present money; they are simply a promise to pay money to the holder at a future time.

III.

The contract made between the government and these plaintiffs, requires all payments made to them to be made in *the coin* of the United States. No matter what may be the character of the currency known as treasury notes, they are not *coin*, and the plaintiffs are not bound to receive them. They had a right to stipulate for a particular mode of payment, and did stipulate for *coin*. The principle is too well settled to be now disputed, that the government is bound by its lawful contracts, and cannot depart from them at will, and when it promises to pay in its *own coin* the creditor has a right to insist on performance.

a. In this case it agre e to pay in coin, and it cannot rightfully pay in any thing else, no matter what the value of the substituted article may be. The insertion of the special clause in the contract was doubtless at the instance of the government, for the contract was prepared in the Bureau of Construction, and as the government desired it to be.

b. When a party stipulates for payment in specie or in kind, equivalents will not answer; he is entitled to *the thing* contracted for, for he may have a particular use for the identical thing, and for that reason provided for it in the contract; if performance is tendered by the other party, it must be of the contract article, or it is no offer to perform.

IV.

It may be argued that the allowance made by congress was not within the contract, and for that reason the government was relieved from its contract obligation to pay in coin. We answer:

1. The government always claimed that not only the mode of construction, but the enlargement was within the contract, and they are estopped from denying this, when we ask for payment, according to *their* construction of the contract.

2. It is by no means certain that congress did not adopt the construction of the treasury department, in making the allowance; it is fairly to be inferred from the joint resolution that they did, for they direct this payment to be made in full for work, etc., done under the contracts.

3. If no contracts had been made, this claim could not have had any existence. They were, *causa causans*, the mother of the allowance, and in this case, as in all others, the incident must follow the principle, and be governed by the same rules; when the government required this work to be done, the contractors had a right to look to their contracts for the mode of payment; and the contracts must govern all the work done in consequence of the making of them.

V.

But congress directed this payment to be made out of a particular fund, and that fund could not have been any thing but the *coin* of the United States; this fund was created by act of congress, in 1857, and set apart for this particular use; it remained intact when the resolution making this allowance to the plaintiffs was adopted; congress had the right to direct out of what fund the debt of the plaintiffs should be paid; they did direct specifically, and the secretary of the treasury had no discretion in the matter; he could not substitute one fund for another, or one currency for another, in violation of an act of congress, and require the plaintiffs to receive the substituted currency.

When the acts making the appropriations for these custom houses were passed, the government had no currency or representative of value but gold and silver; of this gold and silver congress directed $120,000 to be set apart for the enlargement and completion of these two custom houses; it was so set apart and dedicated exclusively to this use; it could not be touched for any other purpose, without the authority of congress. Over $100,000 of this identical money remained in the treasury on the 9th of March, 1863. Congress directed the secretary of the treasury to pay $74,583 of this identical money to the plaintiffs; by virtue of this act of congress $74,583 of the money, so set apart, became the money of the plaintiffs by equitable assignment, and the custodian of it was bound on a proper demand to hand it over to them. That demand was made on the 9th day of March; the secretary refused to obey the act of congress, and handed out a currency inaugurated long after this fund was set apart, and which was then 58½ per cent. below the par of gold, and required the plaintiffs to take this substituted and depreciated currency, or nothing; they received the "treasury notes" under solemn protest, and contemporaneously with receiving them, put on file with the secretary of the treasury their claim to be paid in *coin*.

All the rights of the plaintiffs were saved by the protest, and if they were entitled to *coin* when the payment was made, they are now entitled to a sum which will make the payment equivalent to *coin* at that time; this sum is $43,631.26, as will be seen by arithmetical calculation.

In conclusion, the petitioners claim that they are entitled to recover on the three grounds suggested in the foregoing points.

1. That metallic coin, being the only currency known to the Constitution, public creditors can legally be paid in nothing else.

2. That by the *terms* of the contract between the petitioners and the government, the government agreed specifically to pay in *coin*.

3. The claim was payable out of a specific fund, which was a gold fund, and another and inferior fund could not be substituted.

a. It is a universal rule of construction that effect shall be given to the *real intention* of the parties (United States *vs.* Gundy, 3 Cranch, 337). Can there be a doubt, that in this case, the parties *intended* absolutely to secure payment in *coin?*

b. A grant by a sovereign is a *contract* with the grantee, and the sovereign is so far bound to good faith, that it cannot divest the right vested by the grant, nor affect it by a repeal.

Fletcher *vs.* Peck, 6 Cranch, 87.

c. But the government of the United States may contract with an individual, it is one of the means to establish the institution of government, and being made *ad idem*, is binding upon both.

United States *vs.* Maurice, 2 Brocken. C. C., 96.

d. A contract may be created by a legislative act, and when so created it binds the government. The

recent revenue acts are of this description: The bonds of the government known as the 5–20's and 10–40's, when sold to individual holders, create a contract on the part of the government to pay the principal within the prescribed time, and to pay the interest in *coin*. The government has concluded itself as to the meaning of the word *coin*, by paying this interest in *gold* and *silver*; it so understands the contract created by these bonds, and the same word found in the petitioner's contracts, creates the same obligation.

L. S. CHATFIELD,

Solicitor for Petitioners.